

NEW ZEALAND COASTAL POLICY STATEMENT

- 5 MAY 2008

SUBMISSION NO. 268 NOTED



1 May 2008

Board of Inquiry – Proposed New Zealand Coastal Policy Statement 2008

C/- The Department of Conservation

PO Box 10420

Wellington 6143

SUBMISSION ON THE PROPOSED NEW ZEALAND COASTAL POLICY STATEMENT 2008

The major part of this submission is concerned with the management and protection of coastal dune systems. I also make a submission in relation to Policy 6 (Integration).

Protection of remaining coastal dune systems of high actual or potential conservation value

I request the inclusion of a policy that aims to preserve those remaining dune systems of high conservation value or high conservation value. Here I refer to those dune systems that adjoin the coast, which may be more or less vegetated and more or less stable. They are sometimes referred to as 'active dunes'. A distinctive indigenous flora and fauna, adapted to sand movement and exposure, is associated with this habitat. However, most New Zealand dune systems are degraded as a result of development and the introduction of exotic species, including marram grass, tree lupin and *Pinus radiata*. Recent surveys have established that about 70 percent of the area of coastal dunes was lost during the later half of the 20th century.

Most of the remaining 30 percent is infested by exotic plants species and pest animals. A collection of important sites remain on the Aupouri Peninsula in Northland and in Rakura National Park and Fiordland National Park in Southland. A scatter of sites occurs throughout central New Zealand.

These sites are known as a result of inventory work during the 1990s by Peter Johnson, Trevor Partridge and others, and as a result of my own work over the last decade. There are less than 50 in total, although there are many remnants that might be considered as suitable sites for restoration. These 50 dune systems, or so, contain a coastal flora and fauna of high conservation value. Moreover, these systems contain landforms and landscapes and preserve geomorphic processes that are an important element of the natural character of the coastal environment.

All of the 50 dune systems are threatened by one or more exotic species, including, for example, marram grass in Mason Bay, tree lupin on Katorete Spit and coastal wattle (*Acacia longifolia*) on the Aupouri Peninsula. Many of these dune systems occur within the Conservation Estate. A number occur on private land or are affected by activities on adjoining private land.

New Zealand has reached a critical stage in the use and protection of coastal dunes, particularly the larger transgressive dune systems. The remaining dune systems of high conservation barely contain the pre-human diversity of coastal dune types, habitats and species. We cannot afford to lose any more.

I submit that the New Zealand Coastal Policy Statement should identify the remaining 50 dune systems of exceptional conservation value (in new schedule) and direct that adverse effects arising from activities in or adjacent to these systems should be avoided. I request the inclusion of the following policy:

Policy # Protection of active coastal dunes

The protection of the active coastal dunes listed in Schedule # is a national priority. Plans and policy statements should ensure these dune systems are protected from inappropriate use and development, including by:

- (a) ensuring that activities within, adjacent to, or down-drift from, these dune systems do not result in the establishment of invasive exotic plants;
- (b) encouraging the restoration of degraded dune systems;
- (c) providing appropriate public access and information;
- (d) avoiding development that adversely affects the ecology, botany or geomorphology of these dune systems, including disturbance to coastal sand systems in the adjacent coastal marine area;
- (e) avoiding damaging off-road vehicle use;
- (f) protecting archaeological sites; and by
- (f) establishing appropriate environmental monitoring of dune system condition.

Policy 6 – Integration

Integrated management is a key objective of the resource management. We have seen very little exercise of those provisions of the Act that provide for the preparation of joint plans (between and within levels of governance) or for joint hearings. I would like to see more specific and prescriptive policy in this area. In addition, I request that the list of circumstances in Policy 6 (clauses (a) to (e)) should point to a wider range of circumstances, including:

- where changes to river flows as a result of damming, abstraction or water diversion may affect the delivery of sediment to the coast marine area;

- where coastal sediment systems are divided by regional council boundaries;
- where exotic pest species are likely to establish in areas of significant conservation value as a result of alongshore transport of propagules (seeds or rhizomes) between regions or districts;

A cover sheet is attached. I wish to be heard in support of my submission.



Dr Mike Hilton
107 Tomahawk Road
Dunedin

Ph cell 021 223 4597
Wk 03 479 8778
Hm 03 454 3151

Report to Policy and Strategy Committee – November 2010 - For information

File No: 22 03 05, 03 04 15

Date: 2 November 2010

To: Chief Executive Officer

From: Group Manager – Policy and Transport

Subject: Update on New Zealand Coastal Policy Statement

Section A (Committee has delegated authority to receive the Report)

Purpose

This report advises Councillors that Government released the New Zealand Coastal Policy Statement 2010 on 28 October, and discusses some implications of this release.

Recommendation:

1. That the report *Update on New Zealand Coastal Policy Statement* (Doc #1788024 dated 2 November 2010) be received for information.
2. That staff review the proposed Regional Policy Statement against the New Zealand Coastal Policy Statement to assess whether a staff submission on the Regional Policy Statement is required.

Background

The Minister of Conservation is responsible for the preparation of a New Zealand coastal policy statement. Its purpose is "to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand" (RMA s56). It is the only mandatory national policy statement under the RMA, reflecting the importance of the coast to New Zealanders.

The coastal environment comprises the coastal marine area, from mean high water springs to 12 nautical miles, and land adjacent to the coast (but not defined by law) that has characteristics, qualities and uses associated with the coast.

The current New Zealand Coastal Policy Statement (NZCPS) was gazetted in May 1994. It sets out principles of how and why the coast should be managed, and policies on the protection of values and qualities and the avoidance of hazards within the coastal environment. Schedule 1 to the NZCPS 1994 defines activities which have or are likely to have a significant or irreversible adverse effect on the coastal marine area, as restricted coastal activities. The consenting authority for restricted coastal activities is the Minister of Conservation for consent applications lodged prior to 1 October 2009 and regional councils for applications after that date but with a Minister's appointee on the hearing committee.

A review of the NZCPS 1994 was required no later than 9 years after its gazettal. The Minister appointed an independent reviewer in 2002 and the reviewer's report was made available in 2004. Council was briefed at that time on implications of the reviewer's findings. As a consequence of the review, the Minister initiated a full review of the NZCPS 1994, resulting in the notification of the Proposed NZCPS 2008, a call for submissions by May 2008, and appointment of a Board of Inquiry to hear submissions. Council was briefed on the proposed statement in March 2008, noting concerns about a 5 year implementation timeframe, implementation costs, information required, and lack of clarity on responsibilities, Crown's interests, planning horizons for sea level rise, coastal occupation charges and reference to non-RMA matters. A submission was lodged detailing these concerns and other suggested wording changes, and the submission was heard by the Board of Inquiry.

The Board's report and policy recommendations were provided to the Minister in July 2009. Many of Council's submission points were addressed in the Board's recommended policy statement, which differed substantially in style and wording and reduced the number of policies from 57 to 31 compared to the Proposed NZCPS 2008.

The Government delayed releasing the Board's recommended statement. Further changes were made during this delay by adding policies on aquaculture and ports whilst reducing the total number of policies to 29 and amending the content and wording of other policies. The final version was released on 28 October 2010 (Appendix 1, and noting that the final layout may be slightly different after approval by the Governor General and gazettal). The NZCPS 2010 becomes operative on 3 December 2010.

Issue

Section 55 of the RMA directs local authorities to amend policy statements and plans to give effect to the operative NZCPS provisions as soon as practicable using a Schedule 1 process, involving notification and submissions, unless the NZCPS directs otherwise.

The NZCPS 2010 only directs otherwise in respect of restricted coastal activities, which are to be removed from coastal plans without a Schedule 1 process. Any activity currently specified as discretionary and restricted coastal activity will become discretionary only, and any activity specified as non-complying and restricted activity will become non-complying only. These changes will apply to consent applications publicly notified after the date that these amendments are made in the plan. Applications already notified will continue to be assessed as restricted coastal activities (refer attachment for an explanation of activity classifications).

In respect of the rest of the policy statement, the concern of Council regarding the 5 year timeframe in the Proposed NZCPS 2008 has been addressed, as this provision has been removed, and policy statements and plans must give effect to the statement as soon as practicable. Giving effect to the NZCPS as soon as practicable has implications for the Proposed Regional Policy Statement and the Regional Coastal Plan and Regional Plan reviews.

The Regional Policy Statement (RPS) review was completed and the document notified on 3 November 2010 without the benefit of being informed by the finalised NZCPS. A full analysis of the NZCPS 2010 is now required in order to assess whether or not the RPS gives effect to all of the NZCPS provisions. In the event that the assessment concludes that the RPS does not give effect to any NZCPS objective or policy and a wording change or new RPS policy is necessary, Council will address that in a staff submission on the RPS.

The RMA requires commencement of a review of all or any part of a plan if the provision(s) has not been the subject of a change during the previous 10 years. The Regional Coastal Plan was made operative (in part) in 2005 and 2007, and the Regional Plan in 2007 (variations excepted) and reviews are required to have commenced by 2015 and 2017, respectively.

"As soon as practicable" may mean that the reviews should be commenced sooner, or a plan change be initiated in the event that either plan does not give effect to all provisions of the NZCPS. Scoping studies of the plan reviews are already underway or scheduled for 2011 and this scoping will now include the matter of giving effect to the NZCPS 2010.

This update is not to provide a summary of the policies of the NZCPS 2010 compared to the NZCPS 1994, as a full analysis of the statement is not yet complete. However, what has been noted so far is that changes include: better guidance on extent and characteristics of the coastal environment, all policies have equal status and are no longer grouped into chapters reflecting activities or matters of national importance, new policy matters include surf breaks of national significance, aquaculture and ports, and all other policy matters have been reworded.

Regional costs and benefits

The NZCPS 2010 will continue to provide guidance on management and protection of the values and uses of the coastal environment. This will assist all local authorities when preparing second generation policy statements and plans by providing clarity and guidance about outcomes sought in the coastal environment. The timing of release of the document will assist EW and submitters in the Regional Policy Statement process and in reviews of the Regional Coastal Plan and Regional Plan.

Community Outcomes

The NZCPS 2010 will assist Council in its functions under the RMA in respect of the coastal environment, by providing guidance on sustainable management of natural and physical resources and more certainty to the community in respect of the protection of values of the coastal environment including natural character and biodiversity, public use of the coastal marine area and beaches, and management of natural hazards.

Statutory Responsibilities

The NZCPS 2010 may impact on the timing of plan reviews (noted above) and on the level of information required to give effect to some policies. The impacts will not be known until a full analysis of the statement is carried out in respect of implications for policy development and implementation, information gathering and environmental monitoring.

Decisions on coastal permits and resource consents within the coastal environment will need to have regard to NZCPS 2010 objectives and policies from 3 December 2010.

It is expected that the Department of Conservation will provide advice on interpretation of the new policy statement and assist local authorities in its implementation through policy statements and plans.

Community Views

Views of the community were communicated through submissions on the Proposed NZCPS 2008. There is no opportunity for further consultation on the NZCPS 2010. The community will have the opportunity through plan reviews to comment on policies in plans intended to give effect to the NZCPS 2010.

Legal Implications

Release of the NZCPS 2010 is unlikely to have any specific legal implications above that required by Council for policy development and plan review and implementation.

Policy Implications / Strategic Links

A full analysis of the NZCPS 2010 is required to assess any implications for policy development and implementation, information gathering and environmental monitoring.

Annual Plan / LTCCP Implications

A full analysis of the NZCPS 2010 is required to assess any implications for policy development and implementation, information gathering and environmental monitoring.

Financial Implications

A full analysis of the NZCPS 2010 is required prior to assessing the financial implications for policy development and implementation, information gathering and environmental monitoring.

Conclusion

The NZCPS 2010 is operative on 3 December 2010. Regional policy statements and plans are required to give effect to the NZCPS 2010 as soon as practicable. An analysis of the new policy statement will enable assessment of its implications for policy development and implementation, information gathering and environmental monitoring.

Vicki Carruthers
Senior Policy Advisor

Vaughan Payne
Group Manager Policy and Transport

Attachments

Appendix 1

NZCPS 2010 October 28 version. Doc #1789696

[EWDOCS-#1789696-NZCPS_2010_October_28_version](#)

1.6.2.1

Permitted Activities

RMA definition: means an activity that is allowed by a plan without a resource consent if it complies in all respects with any conditions (including any conditions in relation to another matter described in s108 or s220) specified in the Plan.

- The RMA uses the term 'conditions' in relation to permitted activity rules.
- If you can do without a condition - get rid of it!
- Permitted activities do not need to have conditions although somewhere in the Plan (preferably the policy level) there should be some guidance as to the effects that the activities that are permitted should not contravene. Furthermore s17 still applies if there are no conditions attached as does s70.
- Conditions must be black and white, you cannot leave any room/option for interpretation.
- If you can't work out valid conditions, place the activity in the controlled or discretionary activity category.
- The thresholds should be that if the activity is minor and doesn't have any adverse effects on the environment and does warrant bureaucratic intervention.

Examples

1. The discharge of domestic sewage effluent (including grey and sullage water but not stormwater) into the ground from on-site domestic sewage treatment and disposal systems designed, constructed, operated and maintained in accordance with Auckland Regional Council 1994 On-Site Wastewater Disposal From Household and Institutions TP58.

is a permitted activity, subject to the following conditions:

- a) The volume of effluent to be discharged shall not exceed 1.26 cubic metres per day averaged over any one month period.
 - b) The discharge shall not cause or constitute a nuisance.
This permitted activity example provides reference to an external document. Because it is part of a rule this document must be available for resource users (preferably attached to the Plan, or at least indicate where the document is available for inspection). Condition a) is specific and measurable, however condition b) is subjective in the absence of a definition of a 'nuisance', furthermore the word is a non-RMA term and should be termed in relation to adverse effects.
2. The removal or destruction of any vegetation in the CMA is a permitted activity subject to the following conditions:
 - a) The removal is undertaken by iwi for traditional harvesting purposes.
 - b) The removal is undertaken for the sole purpose of clearing an existing navigational channel or existing boat launching site, and the vegetation to be removed covers a ground area less than 10 square metres.
 - c) In all cases the vegetation to be removed shall not be identified as a conservation value within the ASCV areas marked on maps (listed) of this Plan.
This example is clear in its intent and leaves no room for interpretation regarding the removal or destruction of vegetation in the CMA.

3. The discharge of water vapour, including steam to air from industrial or trade premises is a permitted activity subject to the following conditions:
- a) The discharge shall not cause any adverse effects on neighbouring properties. *This example although restricted to a certain type of discharge, does not follow through with adequate guidance as to the adverse effects that should not be occurring from that discharge.*

1.6.2.2

Controlled Activities

RMMA definition: means an activity which –

- a) Is provided for as a controlled activity, by a rule in a plan or proposed plan.
- b) Complies with standards and terms specified in a plan or proposed plan for such activities.
- c) Is assessed according to matters the consent authority has reserved control over in the plan or proposed plan; and
- d) Is allowed only if a resource consent is obtained in respect of that activity,

Refer also provisions in s68(3A)

- Controlled activities are intended to be activities that are generally acceptable but which may require some level of control to ensure that effects can be adequately addressed. There needs to be a valid reason why we need to know about these activities.
- Applications for controlled activities cannot be declined.
- The RMMA uses standards and terms for controlled activities. Conditions and standards and terms are essentially different phrases for the same thing.
- 'Standards' are the stated thresholds of acceptability, these may include either performance standards or development standards.
- 'Terms' are also matters which proposals must comply with, but more generally include matters such as payment of financial contributions or monitoring requirements for example.
- Where activities are provided for as controlled activities the plan must set out what aspects of the activity the Council intends to reserve control over.
- You do not need to have standards and terms in a controlled activity that are better dealt with as conditions on a consent –i.e. matters for control are not consent conditions but they can lead to consent conditions if necessary.
- Notification. The Plan should give guidance as to what circumstances the Council will notify or not notify an application. Need to ensure that the wording of s94(1)(b) or (1A) is followed. Non notification gives additional comfort to the user but must be specified in the Plan to provide certainty for the users and the regional community.

Examples

1. The removal or demolition of any structure, or any part of a structure in the CMA which results in:
 1. Minor adverse effects on the foreshore or seabed
 2. Some part of the structure remaining in the CMA
 3. Minor effects on water quality

Is a controlled activity provided it complies with the standards and terms stated in this rule:

 - a) The activity shall have only minor adverse effects on the foreshore or seabed.

- b) The activity shall have only minor adverse effects on water quality.
 - c) Any part of a structure that remains shall not cause risk to the safety of other users in the CMA.
Firstly, this example is repetitive in the description and then in the standards and terms. Keeping in mind that a controlled activity has to be granted, this example leaves the scope wide open for everything to be consented. What is minor? the example does not provide a clear threshold for when activities move up into the discretionary activity category by having 'major' or 'significant' effects.
2. The deposition of clean sand/shell onto the foreshore of the CMA for the sole purpose of beach nourishment, is a controlled activity provided it complies with the standards and terms stated in this rule:
- 1. The material to be deposited shall not contain any contaminants.
 - 2. The deposition shall not exceed 10,000 cubic meters in volume in any 12 month period.

The matters over which the Regional Council reserves control are:

- a) The particle size and composition of material and the location of the deposit.
- b) The method and rate of deposition
This example is clear in its indication of a threshold for the activity and the matters where the Council will reserve control. To make the first standards/terms meaningful, a definition or indication of what is meant by 'contaminants' would need to be provided.

1.6.2.3

Discretionary Activities

RNA definition: means an activity –

- a) Which is provided for as a discretionary activity by a rule in a plan or proposed plan
- b) Which is allowed only if a resource consent is obtained in respect to that activity; and
- c) Which may have standards and terms specified in a plan or proposed plan
- d) In respect of which the consent authority may restrict the exercise of its discretion to those matters specified in a plan or proposed plan for that activity.

Refer also provisions in s68(3B)

- As the title implies a Council can restrict its discretion approving or declining a resource consent application.
- To be useful discretionary activities need to have attached guidance for decision making (i.e. assessment criteria, although the need for this may be covered by the inclusion of clearly focused objectives and policies).
- Notification/non notification. Need to ensure that the wording of s94(1)(b) or (1A) is followed. Non notification gives additional comfort to the user but must be specified in the Plan. Discretionary activities can still be non-notified in accordance with s94(2).
- Section 67(f) needs also to be provided for particularly in relation to discretionary activities.
- The RNA provides for the use of Restricted Discretionary Activities. Through the use of these rules a Council can restrict the exercise of discretion to certain specified matters when dealing with discretionary activities. This is not really a preferred

option, if we have the information to restrict our discretion it is considered better to be specific in a controlled activity instead.

Examples

1. The following soil disturbance activities in a high risk erosion area occurring in any continuous 12 month period:
 - a) roading and tracking activities greater than 2,000 metres in length, or
 - b) soil disturbance activities exceeding 1,000 cubic metres in volume, or
 - c) soil disturbance activities of areas greater than 2.0 hectares. are discretionary activities.

In assessing any application under this rule, in addition to the matters listed in s104 of the RMA Waikato Regional Council shall have regard to, but shall not be restricted to the following matters:

- a) The potential effects on soil erosion, slope stability, adjacent waterbodies and water quality.
- b) The extent to which the activity will affect neighbouring properties.
- c) The extent to which the activity will affect any lawful structures.

This example is clear in defining the cut off points for a discretionary activity category. The rule provides guidance as to what the Council will have regard to in assessing the application. This is helpful to provide as it gives an indication to potential applicants as to the types of things they need to consider in the AEE's.

2. The removal of vegetation that has a more than a minor adverse effect on the surrounding land stability is a discretionary activity. *Obviously this example provides no definitive cut off point by stating 'more than a minor adverse effect'. What effects are we managing for? what is a minor effect?*

1.6.2.4

Non-Complying Activities

RNA definition: means an activity which -

- a) Is provided for, as a non complying activity by a rule in a plan or proposed plan.
- b) Contravenes a rule in a plan or proposed plan - and is allowed only if a resource consent is obtained in respect of that activity.

- There are two ways an activity can fit into this category:
 - a) Specified as a non complying activity in the plan
 - b) Doesn't fit into the relevant permitted, controlled or discretionary activity.
- Non complying activities have jurisdictional threshold (s105(2)(b)). This sends a signal that there are activities that Environment Waikato does not particularly want to allow (sends a discouraging signal).
- Non complying activities have to be assessed against the policies and objectives of the Plan.

Examples

1. The drilling of wells or bores below the water table in a Protected Geothermal System (listed) is a non-complying activity. *This example is clear and specific providing a strong non-negotiable statement of the Councils intent.*

1.6.2.5

Prohibited Activities

RNA definition: means an activity which a plan expressly prohibits and describes as an activity for which no resource consent can be granted (and includes any activity prohibited by s105(2)(b) of the Historic Places Act 1993).

- Rules that prohibit must be totally black and white with no room for doubt or interpretation.
- Prohibiting activities is a very severe regulatory instrument. Activities should only be identified as prohibited activities if there is no conceivable way, scale or rate that the activity could operate/establish which ensures that the adverse effects associated with the activity can be avoided, remedied or mitigated.
- Inappropriate prohibited activity rules will lead to a plan change challenge.

Examples

1. The discharge of untreated farm dairy effluent directly into any water is a prohibited activity, and no consent may be sought in respect of this activity. *This example is clear and specific providing a strong non-negotiable statement of the Council's intent.*
2. The discharge of hazardous contaminants into or onto land is a prohibited activity, and no consent may be sought in respect of this activity, unless stated elsewhere in the Plan. *This example lends itself to be open to negotiation. Furthermore to be applicable it would have to list in the rule what hazardous contaminants that are being referred to, or what document/legislation/definition applies.*

To:
 Board of Inquiry
 Proposed New Zealand Coastal Policy Statement
 C/o Department of Conservation
 PO Box 10 420
 Wellington 6143

NEW ZEALAND COASTAL POLICY STATEMENT - 7 MAY 2008 SUBMISSION NO: 447 NOTED: <i>Q</i>
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Submission on the Proposed New Zealand Coastal Policy Statement 2008

The specific provisions of the proposal that my submission relates to are: obj 3, policies 26, 30-36, 40, 42 and 43

My submission is that

1. The intent of objective 30 and policies 30-36 are supported but there is a need to address the muddling of the provisions of s6(a) of the Resource Management Act and other provisions in sections 6 and 7 of the Act. By "defining" natural character in a way that incorporates the requirements in, for example s6(c) and (b) this can have the effect of limiting the way that s6(a) is implemented. I am currently undertaking PhD research evaluating the effect of long standing national policy to preserve the natural character of coastal and lake environments and would be happy to provide advice on the meaning of natural character.
2. Policy 26 on the removal of abandoned or redundant structures should be expanded to address existing structures in this category, e.g. abandoned marine farms. A method for funding this would be required.
3. Policy 40 on esplanade reserves and strips should clarify that these tools are created for a range of purposes, not just access.
4. Policies 42 and 43 should also include natural character.
5. An additional matter would be a policy for councils to address the paper roads around coastal margins so that a more effective protective status is put in place

I wish to be heard in support of my submission

If others make a similar submission I would consider a joint presentation

Signed by

Dated: 6 May 2008

Victoria Froude

Victoria Froude

Address for service:

Victoria Froude
 5D Deeming Road
 RD 1 Russell 0255
 Bay of Islands
 Ph 09 403 8898
 Email : vfroude@slingshot.co.nz

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