

To review or NOT TO REVIEW

It's been 12 years since the Coastal Policy Statement took effect, replacing its former 1994 version. While it has been influential, Boffa Miskell planners **Hamish Wesney** and **Charles Horrell** consider whether the NZCPS remains fit for purpose and question whether it is timely to review the NZCPS.

As we look back over those 12 years of effect, the Coastal Policy Statement (NZCPS) has undoubtedly been an influential, if not the most influential, planning document in how it has shaped contemporary planning.

Most notably, the directive nature of particular policies resulted in the ⁽¹⁾ Supreme Court's King Salmon decision finding that verbs used in policy do take their literal meaning.

Further, in the same decision the use of the "overall judgment" approach to decision-making was discounted, thereby clarifying that decision-makers cannot simply undertake a weighing-up exercise where there is directive protectionist policy.

The NZCPS also provided possibly the first iteration of the mitigation hierarchy⁽²⁾ and the use of terms such as "functional need" that are now imbedded in contemporary planning.

Is the NZCPS still fit for purpose?

In some respects, it cannot be argued that the NZCPS is delivering on what it



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intended to do. Natural Character, for instance, was a key driver for the review of the former NZCPS⁽³⁾ which had seen degradation of natural character within the Coastal Environment.

Where natural character has been mapped and identified in district and regional planning documents, the NZCPS contains clear direction for the protection and enhancement of natural character. However, there has been a lack of accepted and consistent methods in mapping and protection of natural character and outstanding natural landscapes⁽⁴⁾. More recent national policy statements⁽⁵⁾ have reduced risk for such implementation issues

through the use of a 'short and sweet' approach to the policy; and a separate, more detailed, implementation section providing clear guidance to decision-makers on how to interpret and implement policy.

The NZCPS has also provided the only direction for coastal hazards and managing the effects of sea level rise. This direction has been key for local authorities in transitioning away from hard engineered structures and avoiding further development in coastal hazard areas.

On the other hand, the roles and responsibilities are unclear and local authorities have struggled to implement meaningful coastal adaptation.

Strategically planning for a 100-year timeframe is also inherently difficult to implement in a planning system that requires an ever-increasing evidence base for decisions, and uncertainties with such a timeframe.

At the time the NZCPS was published, there was one other National Policy Statement⁽⁶⁾ in effect. We now have five national policy statements with an additional National Policy Statement expected by the end of the year. There are overlaps between the national direction and while supposedly they are all held equal, how can they be if the NZCPS did not anticipate them?

Means of 'protection' through other national direction has also evolved. The effects management hierarchy and provision for ecological offsetting and compensation are now a common approach. This approach can be seen as more an outcome-based focus, as opposed to a hold-the-line approach through rigid avoidance, as currently required in the NZCPS.

The nature and magnitude of resource management issues within the Coastal Environment have also likely changed. The NZCPS currently identifies 10 key issues. While many of these issues remain relevant, we note these issues were identified more than 12 years ago and there has been significant technological changes and new information since.

District and Regional Planning documents are expected to be reviewed within every 10-year period providing an opportunity for resource management issues to be reconsidered. So why not national planning documents? Activities and development in new areas of the Coastal Marine Area (CMA) are possible that were not anticipated 12 years ago.

Offshore wind energy generation for instance is an activity that is now a viable option and could play a significant role in meeting New Zealand's renewable energy targets.

It, along with other activities such as deep-sea marine aquaculture, demand parts of the CMA that have not previously

been sought or anticipated for this type or scale of development. These parts of the CMA being areas closer to the 12 nautical mile limit than the mean high-water springs. However, the NZCPS does not anticipate such activities and rather would likely preclude them through its directive and inflexible policy.

Additionally, there is new information available for other issues that had been identified in 2010. For instance, there is much greater understanding and certainty around climate change and its associated impact than we had 12 years ago.

Providing for coastal adaption is more important than ever and, while new bespoke legislation is necessary and coming, the local government sector is needing to make coastal adaption decisions now. Enabling managed retreat may not be practicable in the interim, but policy direction that further supports coastal adaption and other forms of nature-based solutions would provide councils with much needed support.

In addition, providing an implementation section could clarify roles and responsibilities.

Lastly, we highlight the integration, or lack thereof, between policies within the NZCPS. For instance, the restrictive policies such as Policy 11 (Indigenous Biodiversity) and 13 (Natural Character) conflict with enabling policies such as Policy 9 (Ports).

This has led to polarised views on whether all policies are held equal; as has been demonstrated through the ongoing Port Otago⁽⁷⁾ case. If the NZCPS is intended to truly enable activities such as ports (or other activities, such as offshore wind farms), the policies must be clear as to how they relate to other policies contained within the NZCPS. This would require clear hierarchy embedded into the policies.

So, what is required?

We consider that while the NZCPS has been an influential document, and has achieved significant strides in

coastal management, it is beginning to become out of touch with contemporary planning and current pressures facing the coastal environment. We consider that a comprehensive review of the NZCPS is required in order to:

1. Review and update the resource management issues facing New Zealand's Coastal Environment;
2. Provide for consistency and integration with other national policy directions;
3. Provide for the effects management hierarchy consistent with other national policy statements;
4. Ensure that integration is provided between enabling and restrictive policy which may include a clear hierarchy; and
5. Provide an implementation section that clarifies roles and responsibilities (between territorial and regional authorities) and interpretation of policy direction.

RMA reform

The reforms to the resource management system will provide an opportunity for a review of the NZCPS including providing for an integrated direction – the National Planning Framework.

This National Planning Framework would seem promising; but will this framework simply be an amalgamation of existing national policies and not resolve the issues identified above; or will it be used as an opportunity to create a truly integrated National Planning Framework relevant to 2022 and beyond?

We would hope that it is the latter. While there has been no indication that a formal review will be undertaken, there is sufficient data currently available to enable such a review, including the collective knowledge of councils and key stakeholders.

With the first Bill of the RMA Reform expected before the year's end, we hope to have an answer on the remit of the National Planning Framework in the not-too-distant future. **LG**

(1) Sustain Our Sounds Incorporated v The New Zealand King Salmon Company Limited [2014] NZSC 40, 105. (2) Minister of Conservation v Mangawhai Harbour Restoration Society 2. Inc [2021] NZHC 3113. (3) New Zealand Coastal Policy Statement 1994. (4) Department of Conservation, July 2017, Review of the effect of the NZCPS 2010 on RMA decision-making. (5) National Policy Statement for Freshwater 2020: National Policy Statement on Urban Development 2020; and National Policy Statement for Highly Productive Land 2022. (6) National Policy Statement on Electricity Generation

(7) Port Otago v Environmental Defence Society [2021] NZCA 683 (currently awaiting the Supreme Court decision)