

Theme Potential Legal Questions

Total number of submission points on the theme

71 individual submission points.

Number of submission points supporting or agreeing with the provisions in the Proposed NZCPS

1 submission.

Number of submission points opposing the provisions in the Proposed NZCPS

2 submissions.

Note: some submissions comment on but do not support or oppose the provisions.

Key messages within the submissions

1. There is a repeat of obligations already imposed under the RMA.
2. There are a number of provisions that fall outside the mandate of the NZCPS as provided for in the RMA, outside the scope of the RMA and conflict with its provisions, or would be more appropriately reflected through RMA changes than through policy documents e.g. precedent and coastal occupation charging.
3. The ability for Councils to implement the provisions is raised, as well as the costs of implementation, in particular through Plan Changes and the subsequent difficulties that may be faced as a result of the process for Plan Changes as provided for in the RMA, such as litigation potential.
4. Inconsistent terminology is used between the RMA and the NZCPS, e.g. 'high water quality'; 'avoid' rather than 'avoid, remedy, mitigate'; 'large mixing zones'; 'given due regard'; and 'coastal hazard' and the query is whether this should be 'natural hazard' as per the RMA, and whether it includes slope stability. There is also uncertainty as to meaning of some phrases such as the breadth of 'any new activity'. Consistent terminology and precise meanings being included will address this issue.
5. Strength of tangata whenua as kaitiaki of the coastal area is not apparent. The NZCPS simply refers back to the RMA provisions.
6. Conflict with other statutes/regulations arises, e.g. with discharges from FPSO's and oil platforms; that titles do not exist for esplanade reserve areas under the Foreshore and Seabed Act; and overlapping responsibilities with the Biosecurity Act and thereby issues with costs of implementation arise.
7. Clarification of processes is required, in particular whether double dipping can arise with coastal occupancy charges for reclamations under both the RMA and the NZCPS.
8. Inconsistent approaches arise, e.g. between the use of mixing zones under the RMA and the NZCPS, between the provisions of Part 2 of the RMA and the provisions of the NZCPS, and between prohibiting more than minor adverse effects under the NZCPS and prohibiting significant adverse effects under the RMA.

Additional Provisions Sought

9. No new provisions are sought in regards to this theme, only wording amendments to existing NZCPS provisions.