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Conceptual solutions for the process improvement of nature management plans and their interaction with the local spatial planning documents

Client: Ministry of Environmental Protection and Regional Development of the Republic of Latvia

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in cooperation with law firm “COBALT”**

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Introduction

Specially protected nature territories (SPNT) in Latvia are geographically determined areas under the protection of state, which are created to protect and preserve biodiversity – rare and typical natural ecosystem, rare and protected plant and animal species, their habitats, scenic and traditional landscapes, geological and geomorphological structures, etc. There are 683 SPNT in Latvia and 333 Natura 2000 territories.

In order to ensure coordinated and reasonable protection and management of each SPNT, nature management plans (NMP) and individual protection and use regulations (IPUR) are developed. IPUR are adopted by the Cabinet of Ministers. Currently 165 SPNT have NMP and 68 SPNT have IPUR that are adopted by the Cabinet of Ministers (information as of 20.10.2015.). Territories that do not have IPUR are regulated by the 16.03.2010. Regulations of Cabinet of Ministers No. 264 “General Regulations on Protection and Use of Specially Protected Nature Territories”.

The following chapters briefly analyse the existing problems and solutions proposed in the framework of developing conceptual solutions for the process improvement of nature management plans and their interaction with the local development planning documents. The English version of the document is a summary of Latvian version, which includes more detailed analytical assessment of existing system, indicating problems and providing argued recommendations (incl., analysis on necessary changes in existing legislation governing SPNT and assessing possible impacts on state and municipal budget in case the recommended system is implemented).

1. Assessment of problems stemming from applicable legislation and recommendation of legal solutions

The legal framework for development of NMP is established in the “Law on Specially Protected Nature Territories” and 09.10.2007 Regulations of the Cabinet of Ministers No. 686 “Regulations on content and development procedure of specially protected nature territories’ nature management plans”. Based on the legislation, NMP contains inter alia a draft IPUR and functional zones. According to the current requirements IPUR together with functional zoning shall be adopted by the Cabinet of Ministers, thus becoming binding; yet the Cabinet is not bound to adopt the same IPUR and zoning version as proposed in the NMP. Thus a situation arises that actually adopted IPUR contain requirements and zoning different from that provided in the approved NMP.

Accordingly, currently NMP is a non-binding document approved by the Minister of Environmental Protection and Regional Development, and in addition to the possibility of changing the contents of IPUR when the draft goes through the Cabinet of Ministers, the adoption procedure is lengthy and it might take up to 1-2 years until IPUR are actually adopted and become binding.

As it is foreseen by the legislation, in addition to IPUR and functional zoning the NMP contain other information on SPNT:

1. General information on SPNT, incl., assessment of legal requirements, description of the territory’s geographical aspects, description of the territory’s socio-economic situation;
2. assessment of the protected territory, incl., influencing factors and potential threats, assessment of landscape, habitats and species, as well as other values and influencing factors;
3. information of management of the protected territory, incl., management objectives and activities;
4. recommendations for necessary amendments in municipal spatial plan;
5. recommendations on draft IPUR or amendments in the existing regulations, as well as recommended functional zoning.

The process of developing NMP involves several public hearing procedures, and municipalities, the territories of which contain the SPNT at issue, give their opinions on the NMP. At the same time, IPUR and zoning which is adopted by the Cabinet of Ministers might depart from the version which was provided to the public, municipalities and NGOs during the public hearing.

Taking into account inter alia above-described problems, several legal solutions have been assessed:

1. NMP is adopted as thematic plan (by the Decree of the Cabinet of Ministers), and is binding and has to be taken into account when developing and publishing legal acts in the area of spatial development planning;

2. NMP is adopted by the Regulations of the Cabinet of Ministers, including parts that create legal consequences for persons in general text and other parts of NMP – in annexes;
3. NMP is adopted as general administrative act by the Cabinet of Ministers or the Minister of the Ministry of Environmental Protection and Regional Development.

The assessment of legal solutions was carried out taking into account the following objectives:

1. Reduction of administrative burden:
 - a. by reducing the number of documents regulating the same issue;
 - b. by reducing time necessary for adoption of NMP and IPUR;
 - c. by introducing easier procedure for making amendments in NMP and IPUR.
2. Ensuring participation of affected persons;
3. Not reducing legal protection possibilities of affected persons.

Taking into account the above-indicated objectives, the summary of assessment of the possible legal solutions is provided in the tables below.

Thematic plan	
<i>Pros</i>	<i>Cons and risks</i>
Restrictions of property rights and obligations on the level of one planning document – not divided in legal acts adopted by municipality and Cabinet of Ministers. Possibility to find a solution on local level.	Municipality has to integrate NMP into its planning documents, but it will require significant resources (incl., time resources). Not all NMP is to be integrated on municipal level, as the objectives, scope and contents of documents differ.
No need to invest additional resources in adoption of legal act on the level of the Cabinet of Ministers. There is only a decree by the Cabinet of Ministers on thematic plan.	If SPNT covers territories of several municipalities, probably each of them will integrate the NMP requirements at different time.
NMP has a clear place in the hierarchy (system) of territory development planning documents.	Thematic plan is still approved by the Cabinet of Ministers, still leaving two documents – thematic plan and municipal spatial plan.
	Not directly applicable and binding to landowners in SPNT as long as NMP is not integrated in municipal planning documents.

NMP – Regulations of Cabinet of Ministers (in municipality – binding regulations)	
<i>Pros</i>	<i>Cons and risks</i>
No 2 documents – NMP and legal act. All requirements and recommendations, and assessment provided in one document. To some extent “thematic plan + Regulations of Cabinet of Ministers”.	Difficult to separate binding part (binding restrictions and requirements) and strategic part in the structure of a legal act.
Clear position of the document – external legal act. Possibilities of challenging (Constitutional court) rather complex, thus	Adoption takes long time (years). No elastic amendment options. Time-consuming process.

benefiting the government by reducing the number of complaints.	
	The document that was agreed upon in public hearing process may be changed in the process of adoption of Regulations of Cabinet of Ministers.
	Possibilities of challenging in Constitutional court have very high requirements for a private person.

NMP – General administrative act	
<i>Pros</i>	<i>Cons and risks</i>
Faster process, better possibilities for amending, more flexible content. Requires less human resources.	Easier to challenge than Regulations of Cabinet of Ministers. More litigation possibilities, entirely due to the fact that the requirements for turning to the Constitutional court are much higher in comparison to administrative court. Increase in Ministry's workload due to representation in court.
The contents more suitable for form and administrative law theory that plans on particular protected area are general administrative acts.	It requires time to get used to the new system which may mean more litigation in the beginning.
More effective protection of personal rights (access to courts).	
Comparison by adopting body	
Cabinet of Ministers	Minister
Coordination, adoption and amending – time-consuming. No benefits when comparing to option of adopting as Regulations of Cabinet of Ministers. In such case it is even better to adopt NMP as the Regulations of Cabinet of Ministers rather than general administrative act.	Less familiar scenario, though in case of general administrative act the Cabinet of Ministers is not the sole body that can adopt binding restrictions in the form of general administrative act.
	Coordination, adoption and amending – more flexible and less time-consuming. Form fits the contents.

Taking into account all pros and cons listed above, the most appropriate legal solution for adoption of NMP is in the form of general administrative act adopted by the minister. Therefore the document does not go into further detail analysing other options, but focuses on general administrative act adopted by the minister.

2. Assessment of other identified problems and possible solutions

Other than legal status of NMP, there is a number of problems that can be identified in relation to contents, terminology, procedure etc. Further a brief summary of identified problems is provided, along with the possible solutions.

- Terminology

Currently the same terminology is used in different legal acts referring to the different situations – the term “functional zone” refers both, to “management” zones in SPNT and to spatial plan zones. In order to avoid confusion, it is recommended to review terminology used in the context of NMP, referring to zones in SPNT as, e.g., “management zones” which would fit the underlying idea.

- SPNT classification and determination of functional zones

In addition to SPNT there is also another category of protected territories, i.e., microreserves, which have different procedure for establishment. Furthermore, special protection requirements are applied to establishment of microreserves in forest by State Forest Service, which protects the territory at issue even before the decision to establish microreserve has actually been adopted, so as to avoid situations, where landowner cuts the forest before restrictions come into force thus destroying nature values. Yet such requirements are not in place for SPNT, where the problem of destroying the nature values before the restrictions come into force is still topical. Similar protection conditions should be available in case of SPNT as well.

As to the functional zones, they oftentimes do not represent actual “function” of the territory at issue. Also as there are no unified guidelines for determination of functional zones, the approaches in different NMP can vary significantly. Guidelines for identification of functional zones would solve such problem.

- Management measures

Currently management measures included in NMP can be considered as a “wish-list”, as they are not binding. Although they are currently being prioritized, the prioritization is more of a formal nature. A possible solution for that could be dividing the measures in “priority (compulsory)” and “recommended” measures, making the compulsory measures binding and trying to find the means to foster their implementation. In addition, current legislation requires to identify possible expenses, though in the majority of cases it is not possible in the stage of developing NMP, as, e.g., for measures focused on construction of infrastructure objects, like bird-watching tower or other infrastructure, it is possible to determine expenses only in the stage of technical project. Therefore this requirement is not practical.

- Complicated contents of NMP

After detailed analysis of legal requirements and consultations with stakeholders (Ministry of Environmental Protection and Regional Development, Nature Conservation Agency, nature experts involved in preparation of NMP, as well as main contractors preparing NMP),

it has been identified that some information which is currently required in NMP is not crucial and/or is not even possible to include in some cases due to the lack of data. Detailed recommendations with NMP structure have been prepared and presented, along with offering an option to divide NMP in three volumes:

1. Binding part (zoning and IPUR);
2. Explanatory part;
3. Scientific reasoning including information on species and habitats.

As alternative to three volumes, also the possibility to set different requirements for big (>4000 landowners) and small (<20 landowners) SPNT NMP has been provided. In such case it is possible to prepare strategy for big SPNT, which would identify long-term priorities and set focus for development of NMP.

- Lack of connection with spatial planning documents

According to the current requirements NMP include chapter "Recommendations on necessary amendments in municipal spatial plan" or "Recommendations for municipal spatial plan", yet the further integration of the recommendations in spatial planning documents is not regulated and oftentimes does not happen, as the plan has non-binding nature and its development is not synchronized with the development or amending of the municipal spatial plans.

In order to improve the integration possibilities, it is recommended to include the following recommendations in NMP:

1. Recommendations for particular sub-zones or territories with different requirements in spatial plans, e.g. in forest territory (M) determining subzone M1, where allowed use is identified as "Forest in specially protected nature territory" ;
2. Recommendations for allowed use in particular functional zone;
3. Recommendations for parcellation of land, e.g., establishing minimum area for new piece of land;
4. Recommendations for main characteristic parameters for building;
5. Recommendations for requirements to be integrated in the spatial plan's use and building requirements of the territory;
6. Recommendations for territories with special requirements;
7. Recommendations in regards to zones of colliding interests – recommendations for more detailed research, development of detailed plan or local plan, environmental recovery plans or landscape regeneration plans.

- Main issues in NMP development procedure

1. Initiation → currently every private or legal person can initiate development of NMP by contacting Ministry of Environmental Protection and Regional Development which makes the decision, yet it should be done on planned basis, thus initiation

should go through Nature Conservation Agency, which determines priorities in development of NMP.

2. Role of steering committee → steering committee consists of different stakeholders and its main function is to supervise development of NMP and represent the interests of its institution (if the member is representing an institution). Each member of the committee has to attest by signature that NMP was developed in accordance with the Regulations of the Cabinet of Ministers No. 686 “Regulations on content and development procedure of specially protected nature territories’ nature management plans”. Yet oftentimes the issues arise when the opinion of the represented institution changes drastically in the final stage of NMP development. Therefore it is recommended to exclude the requirement for establishment of steering committee, as the stakeholder participation is ensured in other ways during different stages of NMP development – 1) the NMP developer cooperates with the stakeholders/institutions indicated in the work task; 2) during the public hearing all of the interested parties are provided with possibility to comment draft NMP; 3) municipality has to provide its official opinion on the NMP.
3. Informing the landowners → current public information is oftentimes not sufficient and it is recommended to require individual informing of landowners (which should be done by municipality, ministry or Nature Conservation Agency, as they can access the information on landowners free of charge) prior to commencing development of NMP.
4. Coordination of planned tourism infrastructure objects → current system requires coordination of planned tourism infrastructure objects with the landowner, but there are many issues that make it either very burdensome or unnecessary, e.g., additional coordination is required upon initiation of construction, problems with locating landowners for purpose of coordination, etc.
5. Burdensome NMP amendment procedure → the problem with making amendments in NMP has been already mentioned above. The possibility to amend or update separate NMP parts should be foreseen by allowing simplified amending procedure.

- NMP development funding problem

The funding provided for development of NMP in majority of cases is not sufficient to be able to develop a plan of high quality. To solve such problem, it is recommended to develop a model estimate, indicating minimum financing for development of a good NMP.

- Improved NMP development procedure

Scheme below depicts recommended improvements in NMP development procedure, which foresees that NMP development starts with Nature Conservation Agency developing NMP development work task, which details what should be included in NMP, what are the priorities and which institutions shall be consulted in the framework of NMP development (as it is recommended to exclude requirement for initiation of steering committee).

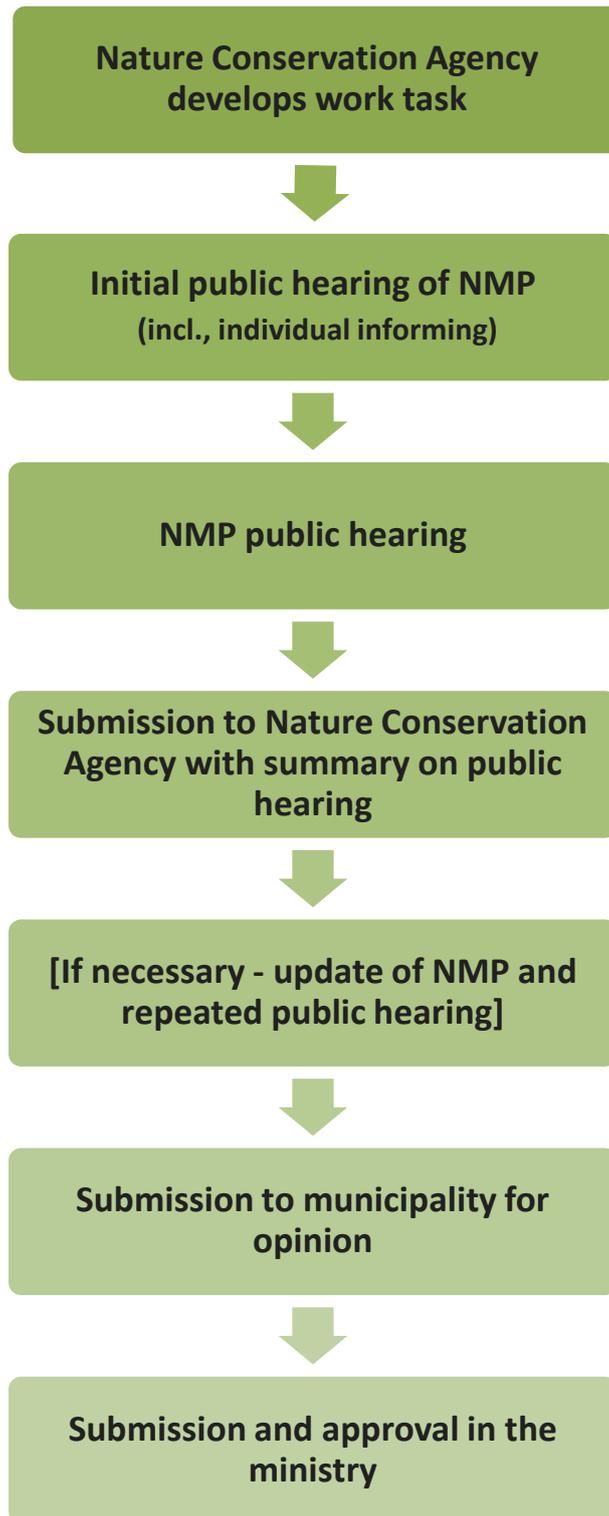


Image No. 1. Recommended NMP development procedure

Conclusions

Overall, the recommended changes – legal, procedural and changes in contents – would facilitate more efficient development of NMP and easier integration possibilities in municipal spatial plan. Changing legal status of the NMP to general administrative act adopted by the minister, will expedite the process and minimize the possibility of making substantial changes in legally binding parts of the NMP. Procedural changes, envisaged in the new system, would facilitate the NMP development process eliminating unnecessary delays and would ensure broad possibilities of public participation and involvement of landowners. While changes in contents and structure of NMP itself would make it more comprehensible to general public, as well as interested parties, separating parts that include binding requirements, scientific information mostly relevant to nature protection institutions and general information on SPNT that can be of interest to the broad public.