

Before the Hearing Panel
Appointed by the Timaru District
Council

Under the Resource Management Act 1991 (**RMA**)
In the matter of submissions on the Proposed Timaru District Plan

Legal submissions of Counsel on behalf of Timaru District Council

30 April 2024

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May it please the Hearing Panel:

Introduction

- 1 These legal submissions are made on behalf of the Timaru District Council (**Council**) in relation to the Timaru Proposed District Plan (**PDP**).
- 2 The purpose of these submissions is to assist the Hearing Panel (**Panel**) by setting out general matters relating to the PDP and the hearing process, and specific issues relevant to this first topic hearing - Hearing A.
- 3 These submissions address:
 - (a) Evidence filed by, and section 42A reports prepared on behalf of, the Council;
 - (b) General matters relating to the PDP and the hearing of submissions on the PDP, including:
 - (i) Background and context, including preparation of the PDP in accordance with Schedule 1, role of mana whenua, key issues raised in submissions and the current regulatory environment;
 - (ii) Matters relevant to the Panel's assessment, including the statutory assessment required to be undertaken by the Panel, how it should approach national direction that has come into force since notification, the scope of amendments that the Panel is entitled to make;
 - (iii) Options for addressing defective submissions;
 - (iv) Minor changes to be made under clause 16; and
 - (c) Specific matters relating to Hearing A, including procedural matters.

Council evidence and section 42A reports

- 4 The Council has filed two statements of evidence relevant to the hearings generally. They have been prepared to assist the Hearing Panel understand the background to the promulgation of the PDP, how the Council has worked with mana whenua on the PDP and the history and relationship of mana whenua with the District. That evidence comprises the following statements:

- (a) **Mr Aaron Hakkaart – Planning Manager - District Plan Review, Timaru District Council.** Mr Hakkaart is an experienced planner who was involved with the development of the PDP in its early days, and is now the manager responsible for the District Plan Review. His evidence sets out the background and history to the promulgation of the PDP, including the process that Council has followed to get to this point.
 - (b) **Mr John Henry – kaitiaki, Kāti Huirapa o Arowhenua.** Mr Henry's evidence sets out the history of Kāti Huirapa in the District, the importance of the District to Kāti Huirapa, and confirms the approach that Council has taken toward working with Kāti Huirapa on the PDP.
- 5 The Panel will be aware that Te Rūnanga o Ngāi Tahu (TRoNT) has lodged a submission on the PDP, and has also filed evidence in relation to Hearing A seeking some further changes. The Council has called Mr Henry as an expert on cultural matters, and to support the collaborative approach that the Council is taking with Kāti Huirapa. Mr Henry's expert cultural advice has informed the Council's position on planning provisions relevant to cultural matters – such as the Mana Whenua chapter in Part 1. There may still be some further changes that either Kāti Huirapa or TRoNT seek to the plan, which need to be raised through evidence. The Council remains open to considering those as they arise throughout the hearing process.
- 6 The Council has also prepared two section 42A reports that specifically relate to Hearing A. They are:
- (a) **Section 42A report: Overarching matters, Proposed Timaru District Plan: Part 1 – Introduction and General Definitions** – prepared by Ms Alanna Hollier. Ms Hollier is a Senior Planner at the Council and has been involved in the plan review over the last year; and
 - (b) **Section 42A report: Proposed Timaru District Plan - Strategic Directions and Urban Form and Development Chapters** – prepared by Mr Andrew Willis. Mr Willis is a consultant planner with significant experience in the preparation of district plans, including strategic directions chapters, and as an independent hearing commissioner.

Background and context to PDP

Preparation of PDP in accordance with Schedule 1

- 7 The PDP has been promulgated as a result of a full review of the Operative Timaru District Plan, in accordance with section 79(4) of the Resource Management Act 1991 (**RMA**). The Council is proposing to alter the plan in accordance with Part 1 of Schedule 1, which is the normal process for promulgating a plan.
- 8 Mr Hakkaart's evidence sets out the steps that the Council has followed in producing the PDP in compliance with Schedule 1, including consultation requirements. The PDP was publicly notified on 22 September 2022 and a total of 255 submissions were received.
- 9 Mr Hakkaart's evidence, and Minute 6: Revised Pre-hearing directions of Hearing Panel (21 March 2024), address the re-notification of the summary of submissions after the Council discovered errors in the summary. The summary of submissions was reviewed, corrected and re-notified on 4 March 2024 in order to avoid any prejudice to potential submitters that might arise as a result of errors in the summary.
- 10 Mr Hakkaart confirms that all submissions and further submissions received have been considered in preparing the section 42A reports. TRoNT's evidence notes that it is unclear from the section 42A reports whether further submissions have been read and addressed. The section 42A reports each contain a section describing how further submissions have been treated.¹ These sections confirm that further submissions have been considered but, generally speaking, they are not specifically mentioned given that they are limited to supporting or opposing the relief sought in the original submission.

Role of mana whenua

- 11 Both Mr Hakkaart and Mr Henry address the journey that the Council and mana whenua have taken together in developing the PDP. The two parties have successfully worked through some difficult spots to achieve an outcome that they both generally support. As noted, TRoNT has lodged a submission and may seek further changes throughout the hearing. Recognising the need to reflect the place of Kāti Huirapa in the district, the Council has enabled the team of experts working on the s42A reports to consult with Aoraki Environmental Consultancy with a

¹ Part 1 section 42A report, paragraph 55; Part 2 section 42A report, paragraph 26.

view to ensuring the matters raised in the TRoNT submission are correctly understood.

- 12 The approach that the Council and mana whenua have taken toward development of the PDP reflects a modern Treaty partnership – while not necessarily an easy road, both parties have approached the process collaboratively to come to an agreed approach where they can. Working through processes like these can strengthen that relationship, and has done so in this case.
- 13 The Panel will hear submissions about some of the plan provisions that have evolved as a result of that process – particularly relating to sites and areas of significance to Māori. These matters will be considered in more detail in Hearing D, when submissions on cultural values and sites of significance are heard. However, it is submitted that working with Kāti Huirapa to identify sites of significance is appropriate in light of section 6(e), which requires the Council to recognise and provide for the relationship of Kāti Huirapa with their ancestral lands, water, sites, wahi tapu and other taonga - which only they can articulate.

Key issues raised in submissions

- 14 Key issues raised in submissions that the Panel will hear evidence and oral submissions on throughout the hearings include:
 - (a) cultural matters, including sites and areas of significance to Māori and the potential impact on private land;
 - (b) mapping of indigenous biodiversity, and related provisions;
 - (c) natural hazards, including in the coastal environment;
 - (d) provision for regionally significant infrastructure, major hazard facilities and other rural and industrial activities (including reverse sensitivity); and
 - (e) zoning changes, including in relation to Future Development Areas.
- 15 We will address any legal issues arising in relation to these submissions at the appropriate time in the hearing schedule.

Current regulatory environment

- 16 The Panel will be aware that there is some uncertainty around the current regulatory environment, with the new Government signalling

upcoming changes to the RMA (including its potential replacement) and national direction, including the National Policy Statement on Highly Productive Land and the National Policy Statement on Indigenous Biodiversity.

- 17 The resource management regulatory environment changes often, and councils are always operating in an environment of some regulatory uncertainty – particularly where higher-level documents require district plans to be reviewed or amended. However, the Council is required to follow the law, including national policy statements (NPSs), as they currently stand. Any future changes to the RMA or national direction will need to go through the normal change processes (ie, adoption of new legislation by Parliament, or the process set out in the RMA for issuing national direction). The Council cannot anticipate what the outcome of those processes will be nor should the Plan attempt to anticipate changes that may or may not come about.
- 18 If there are changes to NPSs or the RMA throughout this hearing process, the Panel will need to consider what they mean, if anything, for the PDP at that time. In the meantime, the Panel is required to consider submissions on the PDP within the current regulatory framework. It is not for the Panel to commence any new process to address new or amended direction. That planning function is for the Council.

Matters relevant to Panel's assessment

Statutory assessment to be undertaken by Panel

- 19 The statutory tests for a plan change are as set out in *Colonial Vineyard Ltd v Marlborough District Council*,² which have been applied and summarised in subsequent decisions. An excerpt from that case that addresses the full list of potentially relevant matters is set out in **Annexure 1** – although that list requires some updating to take account of amendments to the RMA since 2014 (those matters are addressed in the list below).
- 20 In this case, the PDP must:
 - (a) be prepared in accordance with the Council's functions,³ and assist the Council to carry out its functions;

² *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17].

³ Section 74(1)(a).

- (b) be prepared in accordance with Part 2;⁴
- (c) give effect to:⁵
 - (i) any relevant national policy statement, including the New Zealand Coastal Policy Statement (NZCPS), or operative regional policy statement; and
 - (ii) the National Planning Standards;
- (d) not be inconsistent with a water conservation order or a regional plan,⁶ or conflict with a provision in a national environmental standard;⁷
- (e) state objectives,⁸ which have been evaluated by examining the extent to which they are the most appropriate way to achieve the purpose of the RMA;⁹ and
- (f) state policies that implement objectives¹⁰ and rules (if any) that implement policies,¹¹ each of which have been evaluated by examining whether they are the most appropriate way to achieve the objectives of the plan¹² by:
 - (i) identifying other reasonably practicable options; and
 - (ii) assessing the efficiency and effectiveness in achieving the objectives.

21 In evaluating policies and methods (including rules), you must take into account the following:¹³

- (a) the benefits and costs of the proposed policies and methods; and

⁴ Section 74(1)(b).

⁵ Section 75(3).

⁶ Section 75(4).

⁷ Section 44A.

⁸ Section 75(1)(a).

⁹ Section 32(1)(a).

¹⁰ Section 75(1)(b).

¹¹ Section 75(1)(c).

¹² Section 32(1)(b).

¹³ Section 32(2).

- (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies or methods.

22 In making your decisions on submissions you must also:

- (a) have regard to:

- (i) any relevant proposed regional policy statement, or proposed regional plan¹⁴ (in relation to a matter of regional significance, or where the regional council has primary responsibility);
- (ii) any management plans and strategies prepared under other legislation and relevant entries on the New Zealand Heritage List/ Rārangī Kōrero to the extent that these matters have a bearing on the resource management issues of the district;¹⁵
- (iii) the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities;¹⁶
- (iv) the Emissions Reduction Plan¹⁷ and the National Adaptation Plan;¹⁸
- (v) (in relation to rules) actual and potential effects on the environment, including, in particular, any adverse effect;¹⁹ and

- (b) take into account:

- (i) any relevant planning document recognised by an iwi authority and lodged with Council.²⁰

- (c) disregard any effects of trade competition.²¹

¹⁴ Section 74(2)(a).

¹⁵ Section 74(2)(b).

¹⁶ Section 74(2)(c).

¹⁷ Section 74(2)(d).

¹⁸ Section 74(2)(e).

¹⁹ Section 76(3).

²⁰ Section 74(2A).

²¹ Section 74(3).

- 23 Your decision report must include a decision on the provisions and matters raised in submissions on the PDP, and the reasons for accepting or rejecting submissions. The report must also include a further evaluation of the PDP in terms of section 32AA.²² Each of the section 42A reports contain a section 32AA assessment of any changes being proposed in those reports.

Giving effect to national policy statements

- 24 Since the PDP was prepared, three NPSs have either come into force or been amended. They are the National Policy Statement on Indigenous Biodiversity 2023 (**NPS-IB**), the National Policy Statement on Highly Productive Land 2022 (**NPS-HPL**), and the National Policy Statement on Urban Development 2020 (amended 2022) (**NPS-UD**).
- 25 Because the PDP was prepared prior to publication of these instruments, the PDP has not attempted to fully give effect to them. How they are to be given effect to will depend on their specific provisions. Unless a direction is given to amend a plan without using a Schedule 1 process, a full Schedule 1 process will be required to fully give effect to the NPS. Each of those instruments set out timeframes for doing so. There is no legal imperative to give effect to the NPSs fully through this plan review and a full section 32 evaluation of the PDP in relation to the NPSs has not been undertaken.
- 26 Further, any changes to the PDP must be within the scope of submissions, and should not prejudice any persons who may not have had adequate notice and opportunity to submit on the changes. Giving effect to the NPSs as a whole in response to submissions may prejudice persons who were not aware that these documents may be implemented in the PDP after notification.
- 27 Where a submission has raised a matter relating to an NPS, the Panel may consider it appropriate to make changes that better give effect to parts of the NPS. However, you should consider whether those changes still raise a risk of prejudice, or risk inconsistent implementation of the policy documents. Section 42A reports have considered submissions on giving effect to these NPSs on that basis.

²² Schedule 1, clause 10.

Scope of amendments to PDP

- 28 The Panel has broad scope to make amendments to the PDP. The Environment Court in *Motiti Rohe Moana Trust v Bay of Plenty Regional Council*²³ (the Motiti case) said:²⁴

It is well established that on appeals about proposed planning instruments there is no presumption in favour of the planning authority's policies or the planning details of the instrument challenged or the authority's decisions on submissions: each aspect stands or falls on its own merits when tested by submissions and the challenge of alternatives or modification.

- 29 However, amendments must be within the scope of the original submissions. The key principles in considering whether an amendment is within the scope of submissions are helpfully summarised by the High Court in *Albany North Landowners v Auckland Council*²⁵ as follows:

- (a) A Council must consider whether any amendment made to a proposed plan or plan change as notified goes beyond what is reasonably and fairly raised in submissions on the proposed plan or plan change.²⁶
- (b) To this end, the Council must be satisfied that the proposed changes are appropriate in response to the public's contribution.²⁷
- (c) The assessment of whether any amendment was reasonably and fairly raised in the course of submissions should be approached in a realistic and workable fashion rather than from the perspective of legal nicety.²⁸
- (d) The "workable" approach requires the local authority to take into account the whole relief package detailed in each submission

²³ *Motiti Rohe Moana Trust v Bay of Plenty Regional Council* (2016) 19 ELRNZ 595.

²⁴ *Motiti*, at [45].

²⁵ *Albany North Landowners v Auckland Council* [2017] NZHC 138.

²⁶ *Albany North*, at [115], referring to *Countdown Properties (Northlands) Ltd v Dunedin City Council* [1994] NZRMA 145.

²⁷ *Albany North*, at [115].

²⁸ *Albany North*, at [115], referring to *Royal Forest and Bird Protection Society of New Zealand v Buller Coal Ltd* [2012] NZRMA 552.

when considering whether the relief sought had been reasonably and fairly raised in the submissions.²⁹

- (e) It is sufficient if the change made can fairly be said to be a foreseeable consequence of any changes directly proposed in the submission.³⁰

30 It is therefore submitted that the Panel has broad scope to make amendments to the PDP provided it is confident that they are a logical consequence of the matters raised in the full range of submissions, such that they would not prejudice a potential further submitter who had elected not to make a further submission.

Defective submissions

31 The Panel will be required to address submissions that are in some way defective. For example:

- (a) A submission may not be "on" the PDP in terms of Schedule 1, clause 6;
- (b) A further submission may seek to enlarge an original submission;
- (c) A further submitter may not have standing to make a further submission; or
- (d) A submission or further submission may be incomplete.

32 We briefly address the law on these matters to assist the Panel in considering any issues that might arise throughout the course of the hearings.

Submissions not "on" the PDP

33 Clause 6 of Schedule 1 provides that once a proposed plan is publicly notified, submissions may be made "on" the plan:

6 Making of submissions under clause 5

(1) Once a proposed policy statement or plan is publicly notified under clause 5, the persons described in

²⁹ *Albany North*, at [115], referring to *Shaw v Selwyn District Council* [2001] 2 NZLR 277.

³⁰ *Albany North*, at [115], referring to *Westfield (New Zealand) Ltd v Hamilton City Council* [2004] NZRMA 556.

subclauses (2) to (4) may make a submission on it to the relevant local authority.

- 34 Whether a submission is "on" a plan arises more frequently in the context of plan changes or variations than full plan reviews. Much of the law therefore relates to the two-limb test developed *Clearwater Resort Limited v Christchurch City Council*.³¹ The more appropriate approach for a full plan review is that taken by the Environment Court in the *Motiti* case, which said:

*...where the Council is fulfilling its statutory functions under s30 and ss66 and 67 of the Act, it must be open to a party to argue that the Council has failed to meet any of those obligations, or that these could be better met by altering the provisions of the plan.*³²

- 35 In finding that a submission seeking a spatial planning approach (which was not proposed by the Bay of Plenty Regional Council) was within the scope of the plan review, the Court held that the submission was "*well within the framework of the ...[plan]...as well as addressing matters under Part 2 of the Act...In short, the submission is clearly within the scope of the Plan review*".³³

- 36 It is submitted that there is therefore broad scope for submissions to be "on" the PDP, given that the PDP is a full review of the resource management issues affecting the District. However, a submission that seeks that the plan address matters outside of the resource management functions of the Council under the RMA is unlikely to be within the framework of the plan, and therefore not "on" the plan in terms of Schedule 1, clause 6.

Further submissions that enlarge original submissions

- 37 Clause 8(2) of Schedule 1 requires further submissions to be:

...limited to a matter in support or in opposition to the relevant submission made under clause 6 or 6A.

- 38 In other words, a further submission cannot enlarge the scope of an original submission – it can simply support or oppose the submission that has already been made. The rationale for that is that the submission and further submission process is designed to ensure there is full and

³¹ *Clearwater Resort Limited v Christchurch City Council* HC Christchurch, William Young J, 14/3/2003.

³² *Motiti*, at [43].

³³ *Motiti*, at [45].

widespread public knowledge of proposals to amend the PDP so that further submissions can be lodged in support or opposition to those proposals. To allow a further submission to expand the relief sought by an original submission would undermine that legislative intent because there would be no opportunity for a further submission on that expanded relief.³⁴

Standing to make further submissions

39 Clause 8(1) limits those who can make a further submission to:

(a) any person representing a relevant aspect of the public interest; and

(b) any person that has an interest in the proposed...plan greater than the interest that the general public has; and

(c) the local authority itself.

40 The High Court in *Palmerston North City Council v Motor Machinists Ltd*³⁵ considered clause 8(2) to capture people directly affected by submissions. In relation to applications under s274 RMA, the same phrase has been held to identify people who have some advantage or disadvantage in relation to the submission, such as a right in property directly affected, that is not remote from the relief sought.³⁶

Options available to Panel for defective submissions

41 Section 41D sets out the circumstances in which a submission may be struck out, including that it is frivolous or vexatious, it discloses no reasonable case, it would be an abuse of process to allow the submission to be taken further, it is supported by evidence that purports to be independent expert evidence but is not, or contains offensive language.

42 If a submission or part of a submission (or further submission) is defective for one of these reasons, the Panel may either:

(a) Strike out the submission or part of it (for example, because allowing a submission that is not "on" a plan change or a further submission that lacks standing would be an abuse of process); or

³⁴ *Kitewaho Bush Reserve Company Ltd v Auckland Regional Council*, ENC Auckland A038/2003, citing *Hilder v Otago Regional Council* [1997] NZEnvC 361.

³⁵ *Palmerston North City Council v Motor Machinists Ltd* [2013] NZHC 1290.

³⁶ *Genera Ltd v Bay of Plenty Regional Council* [2018] NZEnvC 171.

(b) Decline to consider the submission or part of it.

- 43 Striking out a submission has significant procedural ramifications insofar as it removes the right of a submitter to appeal the decision, including arguing there is scope by way of an appeal on the decision on the plan. A submitter can object to a strike out decision under section 357.
- 44 It is therefore submitted that the Panel should exercise caution in striking out a submission or further submission, and that it may be more appropriate to decline to consider the submission – for example, on the basis that it is out of scope or does not disclose a reasonable or relevant case.

Clause 16- minor changes

- 45 The Council can make minor amendments to the PDP under clause 16(2) of Schedule 1 *"to alter any information, where such an alteration is of minor effect, or may correct any minor errors"*.
- 46 Section 42A authors have recommended minor amendments to the PDP under clause 16 to be made by the Panel for transparency, although they could be made by the Council once the decisions version of the PDP is released.

Specific issues in relation to Hearing A

- 47 This hearing address two parts of the PDP:
- (a) Part 1: Introduction and General Provisions, which includes the introduction, how the plan works, interpretation/definitions and description of mana whenua matters in the District; and
 - (b) Part 2: District-wide matters – Strategic Direction, which includes strategic direction and urban form and development.

Section 42A reports

- 48 Section 42A reports have been prepared in relation to Part 1 and Part 2. Ms Hollier's report (Part 1) also addresses general high-level submissions that relate to the whole plan, rather than a specific chapter within Part 1.
- 49 The section 42A reports address the submissions and further submissions on Parts 1 and 2 of the PDP in detail. Based on the evidence circulated by submitters in advance of the hearing, it appears

that many issues have been resolved by the section 42A reports. The Panel will hear from some submitters that have not pre-circulated evidence. It is therefore not yet clear whether outstanding matters remain in relation to those submissions.

- 50 The section 42A report authors will identify, in their report summaries to be presented at the hearing, the issues they understand to be outstanding. The authors will also identify their agreement with proposed amendments suggested in submitters' evidence, where possible. The authors will hear submissions and evidence on outstanding matters before addressing them in reply. The report summaries will be filed in advance of the hearing in order to assist the Panel identify the matters in contention.

Part 1 - Definitions

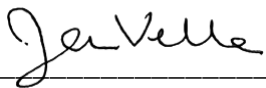
- 51 A key matter for the Panel's consideration in relation to Part 1 relates to the Definitions section. While all of the PDP definitions are contained in that section, this hearing does not address every definition. Where appropriate, some definitions are to be considered in later hearings alongside the topic they specifically relate to. That is the case with the definition of "drive-through restaurant" proposed by Harvey Norman Properties (N.Z.) Limited – this will be dealt with in Hearing B in relation to the Large Format Retail zone.
- 52 There will be overlap between the definitions of terms and the provisions of later chapters. Definitions may, for example, impact on how the objectives, policies and rules in subsequent chapters operate. The significance of the definitions therefore will become more apparent to the Panel as the hearings progress.
- 53 It may also transpire that changes recommended to provisions in subsequent chapters will necessitate a change to a definition. For that reason, the section 42A report notes that some recommendations are made on an interim basis, pending future section 42A reports on the substantive provisions. The section 42A report authors will assist the Panel by advising of any recommended changes to definitions in section 42A reports on the substantive chapters.

Strategic Direction

- 54 The Strategic Direction section of the plan is arranged in two chapters: Strategic Directions and Urban Form and Development. These are high level sections of the plan that provide overall direction for the more substantive and detailed provisions that follow.

- 55 They are therefore important in terms of providing overall strategic direction for the plan and for development in the District - they are informed by the Timaru District 2045 Growth Management Strategy. However, guidance on specific activities, values or locations is provided through the topic-specific district-wide and area-specific chapters.
- 56 Given the high-level nature of the Strategic Directions chapter, there may be some circumstances in which some of its provisions may need to be revisited through the hearing of subsequent chapters. The Council, Panel and submitters will need to be agile in approaching those matters and the section 42A authors will collaborate to ensure that these matters are appropriately addressed throughout the various hearings.
- 57 The Council is grateful to the submitters for their contribution towards getting the PDP to this point, and thanks the Panel for the time and effort it is putting into hearing and considering the community's submissions on the plan.

Dated this 30th of April 2024



Michael Garbett/Jen Vella
Counsel for Timaru District Council

Annexure 1

Excerpt from *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55

"1.4 What matters must be considered?"

[17] Since these proceedings concern a plan change we must first identify the legal matters in relation to which we must consider the evidence. In *Long Bay-Okura Great Park Society Incorporated v North South City Council*¹ the Environment Court listed a “relatively comprehensive summary of the mandatory requirements” for the RMA in its form before the Resource Management Amendment Act 2005. The court updated this list in the light of the 2005 Amendments in *High Country Rosehip Orchards Ltd v Mackenzie District Council* (“High Country Rosehip”)². We now amend the list given in those cases to reflect the major changes made by the Resource Management Amendment Act 2009. The different legal standards to be applied are emphasised, and we have underlined the changes and additions³ since *High Country Rosehip*⁴:

“A. General requirements

1. A district plan (change) should be designed to **accord with**⁵ — and assist the territorial authority to **carry out** — its functions⁶ so as to achieve the purpose of the Act⁷.
2. The district plan (change) must also be prepared **in accordance with** any regulation⁸ (there are none at present) and any direction given by the Minister for the Environment⁹.

¹ *Long Bay-Okura Great Park Society Incorporated v North Shore City Council* Decision A78/2008 at para [34].

² *High Country Rosehip Orchards Ltd v Mackenzie District Council* [2011] NZEnvC 387.

³ Some additions and changes of emphasis and/or grammar are not identified.

⁴ Noting also:

(a) that former A6 has been renumbered as A2 and all subsequent numbers in A have dropped down one;

(b) that the list in D has been expanded to cover fully the 2005 changes.

⁵ Section 74(1) of the Act.

⁶ As described in section 31 of the Act.

⁷ Sections 72 and 74(1) of the Act.

⁸ Section 74(1) of the Act.

⁹ Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.

3. When preparing its district plan (change) the territorial authority **must give effect** to¹⁰ any national policy statement or New Zealand Coastal Policy Statement¹¹.

4. When preparing its district plan (change) the territorial authority shall:

(a) have regard to any proposed regional policy statement¹²;

(b) give effect to any operative regional policy statement¹³.

5. In relation to regional plans:

(a) the district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order¹⁴; and

(b) **must have regard to** any proposed regional plan on any matter of regional significance etc¹⁵.

6. When preparing its district plan (change) the territorial authority must also:

- **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations¹⁶ to the extent that their content has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities¹⁷;

- **take into account** any relevant planning document recognised by an iwi authority¹⁸; and

¹⁰ Section 75(3) RMA.

¹¹ The reference to 'any regional policy statement' in the Rosehip list here has been deleted since it is included in (3) below which is a more logical place for it.

¹² Section 74(2)(a)(i) of the RMA.

¹³ Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

¹⁴ Section 75(4) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

¹⁵ Section 74(2)(a)(ii) of the Act.

¹⁶ Section 74(2)(b) of the Act.

¹⁷ Section 74(2)(c) of the Act.

¹⁸ Section 74(2A) of the Act.

- not have regard to trade competition¹⁹ or the effects of trade competition;

7. The formal requirement that a district plan (change) must²⁰ also state its objectives, policies and the rules (if any) and may²¹ state other matters.

B. Objectives [the section 32 test for objectives]

8. Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act²².

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies²³;

10. Each proposed policy or method (including each rule) is to be examined, having **regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives²⁴ of the district plan **taking into account**:

(i) the benefits and costs of the proposed policies and methods (including rules); and

(ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods²⁵; and

(iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances²⁶.

¹⁹ Section 74(3) of the Act as amended by section 58 Resource Management (Simplifying and Streamlining) Act 2009.

²⁰ Section 75(1) of the Act.

²¹ Section 75(2) of the Act.

²² Section 74(1) and section 32(3)(a) of the Act.

²³ Section 75(1)(b) and (c) of the Act (also section 76(1)).

²⁴ Section 32(3)(b) of the Act.

²⁵ Section 32(4) of the RMA.

²⁶ Section 32(3A) of the Act added by section 13(3) Resource Management Amendment Act 2005.

D. Rules

11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment²⁷.

12. Rules have the force of regulations²⁸.

13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive²⁹ than those under the Building Act 2004.

14. There are special provisions for rules about contaminated land³⁰.

15. There must be no blanket rules about felling of trees³¹ in any urban environment³².

E. Other statutes:

16. Finally territorial authorities may be required to comply with other statutes.

F. (On Appeal)

17. On appeal³³ the Environment Court must have regard to one additional matter — the decision of the territorial authority³⁴.”

²⁷ Section 76(3) of the Act.

²⁸ Section 76(2) RMA.

²⁹ Section 76(2A) RMA.

³⁰ Section 76(5) RMA as added by section 47 Resource Management Amendment Act 2005 and amended in 2009.

³¹ Section 76(4A) RMA as added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

³² Section 76(4B) RMA — this ‘Remuera rule’ was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

³³ Under section 290 and Clause 14 of the First Schedule to the Act.

³⁴ Section 290A RMA as added by the Resource Management Amendment Act 2005.