

## SCHEDULE 1 – CASE EXTRACT

### *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] (bolder emphasis original)

- A. *General requirements*
1. A district plan (change) should be designed to **accord with**<sup>18</sup> – and assist the territorial authority to **carry out** – its functions<sup>19</sup> so as to achieve the purpose of the Act<sup>20</sup>.
  2. The district plan (change) must also be prepared **in accordance with** any regulation<sup>21</sup> (there are none at present) and any direction given by the Minister for the Environment<sup>22</sup>.
  3. When preparing its district plan (change) the territorial authority **must give effect to**<sup>23</sup> any national policy statement or New Zealand Coastal Policy Statement<sup>24</sup>.
  4. When preparing its district plan (change) the territorial authority shall:
    - (a) have regard to any proposed regional policy statement<sup>25</sup>;
    - (b) give effect to any operative regional policy statement<sup>26</sup>.
  5. In relation to regional plans:
    - (a) a district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section 30(1) or a water conservation order<sup>27</sup>; and
    - (b) **must have regard to** any proposed regional plan on any matter of regional significance etc<sup>28</sup>.
  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 regulations<sup>29</sup> 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 authorities<sup>30</sup>;
    - **take in account** any relevant planning document recognised by an iwi authority<sup>31</sup>; and
    - not have regard to trade competition<sup>32</sup> or the effects of trade competition;
  7. The formal requirement that a district plan (change) must<sup>33</sup> also state its objectives, policies and the rules (if any) and may<sup>34</sup> state other matters.
- B. *Objectives [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 Act<sup>35</sup>.
- 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 policies<sup>36</sup>;
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 objectives<sup>37</sup> 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 methods<sup>38</sup>; 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 circumstances<sup>39</sup>.

#### D. Rules

11. In making a rule the territorial authority must **have regard to** the actual or potential effect of activities on the environment<sup>40</sup>.
12. Rules have the force of regulations<sup>41</sup>.
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive<sup>42</sup> than those under the Building Act 2004.
14. There are special provisions for rules about contaminated land<sup>43</sup>.
15. There must be no blanket rules about felling trees<sup>44</sup> in any urban environment<sup>45</sup>.

#### E. Other statutes [sic]:

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

#### F. (On Appeal)

17. On appeal<sup>46</sup> the Environment Court must have regard to one additional matter – the decision of the territorial authority<sup>47</sup>.

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18 Section 74(1) of the Act.  
 19 As described in section 31 of the Act.  
 20 Sections 72 and 74(1) of the Act.  
 21 Section 74(1) of the Act.  
 22 Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.  
 23 Section 75(3) RMA.  
 24 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.  
 25 Section 74(2)(a)(i) of the RMA.  
 26 Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].  
 27 Section 75(4) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].  
 28 Section 74(2)(a)(ii) of the Act.  
 29 Section 74(2)(b) of the Act.

- 30 Section 74(2)(c) of the Act.
- 31 Section 74(2A) of the Act.
- 32 Section 74(3) of the Act as amended by section 58 Resource Management (Simplifying and Streamlining) Act 2009.
- 33 Section 75(1) of the Act.
- 34 Section 75(2) of the Act.
- 35 Section 74(1) and section 32(3)(a) of the Act.
- 36 Section 75(1)(b) and (c) of the Act (also section 76(1)).
- 37 Section 32(3)(b) of the Act.
- 38 Section 32(4) of the RMA.
- 39 Section 32(3A) of the Act added by section 13(3) Resource Management Amendment Act 2005.
- 40 Section 76(3) of the Act.
- 41 Section 76(2) RMA.
- 42 Section 76(2A) RMA.
- 43 Section 76(5) RMA as added by section 47 Resource Management Amendment Act 2005 and amended in 2009.
- 44 Section 76(4A) RMA as added by section 47 Resource Management Amendment Act 2005 and amended in 2009.
- 45 Section 76(4B) RMA – this "Remuera rule" was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.
- 46 Under section 290 and Clause 14 of the First Schedule to the Act.
- 47 Section 290A RMA as added by the Resource Management Amendment Act 2005.