

## Appendix 8: Statutory Framework

First Schedule, Clause 29:

1. In making its decision, Clause 29 of the First Schedule of the RMA states that:

“29 Procedure under this Part

- (1) Except as provided in subclauses (1A) to (9), Part 1, with all necessary modifications, shall apply to any plan or change requested under this Part and accepted under clause 25(2)(b).
- (1A) Any person may make a submission but, if the person is a trade competitor of the person who made the request, the person’s right to make a submission is limited by subclause (1B)
- (1B) A trade competitor of the person who made the request may make a submission only if directly affected by an effect of the plan or change that—
  - (a) adversely affects the environment; and
  - (b) does not relate to trade competition or the effects of trade competition.
- (2) The local authority shall send copies of all submissions on the plan or change to the person who made the request.
- (3) The person who made the request has the right to appear before the local authority under clause 8B.
- (4) After considering a plan or change, undertaking a further evaluation of the plan or change in accordance with section 32AA, and having particular regard to that evaluation, the local authority—
  - (a) may decline, approve, or approve with modifications the plan or change; and
  - (b) must give reasons for its decision.
- (5) In addition to those persons covered by clause 11, the local authority shall serve a copy of its decision on the person who made the request under clause 21.
- (6) The person who made the request, and any person who made submissions on the plan or change, may appeal the decision of the local authority to the Environment Court.
- (7) Where a plan or change has been appealed to the Environment Court, clauses 14 and 15 shall apply, with all necessary modifications.
- (8) Where a plan or change has been appealed to the Environment Court, the person who made the request under clause 21 has the right to appear before the Environment Court.
- (9) With the agreement of the person who made the request, the local authority may, at any time before its decision on the plan or change, initiate a variation under clause 16A.”

2. The decision in *Long Bay Okura Great Parks Society Incorporated v North Shore City Council* (Decision A 078/2008), and amended in *High Country Rosehip Orchards Ltd and Ors v Mackenzie DC* ([2011] NZEnvC 387) at pages 17-18 to reflect the changes made by the Resource Management Amendment Act 2005, sets out the mandatory requirements for district plan (changes), see Appendix X.

“A. General requirements

1. *A district plan (change) should be designed to accord with, and assist the territorial authority to carry out its functions so as to achieve, the purpose of the Act.*
2. *When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.*
3. *When preparing its district plan (change) the territorial authority shall:*
  - (a) *have regard to any proposed regional policy statement;*
  - (b) *give effect to any operative regional policy statement;*
  - (c) *have regard to the extent to which the plan needs to be consistent with the plans of adjacent territorial authorities*
4. *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 order]; and*
  - (b) *must have regard to any proposed regional plan on any matter of regional significance etc.;*
5. *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; and to consistency with plans and proposed plans of adjacent territorial authorities;*
  - *take into account any relevant planning document recognised by an iwi authority; and*
  - *not have regard to trade competition;*
6. *The district plan (change) must be prepared in accordance with any regulation and any direction given by the Minister for the Environment.*
7. *The requirement that a district plan (change) must also state its objectives, policies and the rules (if any) and may 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 Act.*
- 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;*
10. *Each proposed policy or method (including each rule) is to be examined, as to whether it is the most appropriate method for achieving the objectives of the district plan by:*
  - (a) *identifying other reasonably practicable options for achieving the objectives; and*
  - (b) *assessing the efficiency and effectiveness of the provisions in achieving the objectives, including:*
    - (i) *identifying, assessing and quantifying (where practicable) the benefits and costs of the environmental, economic, social and cultural effects anticipated from the implementation of the provisions, including opportunities for economic growth and employment; and*

(ii) *assessing 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; and*

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

D. Rules

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

12. *There are special provisions for rules about contaminated land.*

13. *There must be no blanket rules about felling of trees in any urban environment.*

E. Other statutes:

14. *Finally territorial authorities may be required to comply with other statutes.”*

I have amended the above summary to also reflect the 2013 amendment to the RMA.