Before an Independent Hearing Panel and Freshwater Hearing

Panel of Greater Wellington Regional Council

Under the	Resource Management Act 1991
In the matter	of the hearing of submissions and further submissions on the Proposed Wellington City District Plan (**PDP**)

SUBMISSIONS ON BEHALF OF WELLINGTON INTERNATIONAL AIRPORT LIMITED

Hearing Stream 5

28 July 2023

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1. INTRODUCTION

1.1 These submissions are filed on behalf of Wellington International Airport Limited (**WIAL**), a submitter on the Wellington City Council (**WCC**) Proposed District Plan (**PDP**) in relation to Hearing Stream 5 – General District Wide Matters. The WCC PDP incorporates an Intensification Planning Instrument (**IPI**).

1.2 Hearing Stream 5 relates to District Matters and includes five topics (Natural Hazards and Coastal Hazards, Earthworks, Subdivision, Three Waters and Noise), of which WIAL has submitted on:

(a) Natural Hazards (Ngā Mōrearea ā-Taiao) and Coastal Hazards;

(b) Earthworks (Ngā Mahi Apu Whenua);

(c) Subdivision (Wawaetanga); and

(d) Noise (Te Oro).

1.3 WIAL filed evidence from:

(a) Jo Lester, Planning Manager, WIAL;

(b) Lachlan Thurston, Head of Operational Readiness, WIAL;

(c) Darran Humpheson, Technical Director of Acoustics, Tonkin & Taylor Limited;

(d) Kirsty O'Sullivan, Associate, Mitchell Daysh Limited;

(e) John Kyle, Director, Mitchell Daysh Limited; and

(f) Rebuttal evidence was filed by Kirsty O'Sullivan and Darran Humpheson.

1.4 The evidence includes a broad outline of WIAL's Obstacle Limitation Surfaces (**OLS**) Designation (**WIAL1**) in line with the Panel's Minute 24 dated 21 June 2023.

1.5 These legal submissions focus on issues relating to the Noise and Subdivision Chapters and, in particular, the key areas of disagreement between WIAL and the S42A report writers as well as submitters.

1.6 We start by addressing some background and statutory matters to set the scene and then discuss the following topics:

(a) Allocation of Provisions – Schedule 1 versus ISPP;

(b) The interrelationship between the District Plan and WIAL Designations;

(c) WIAL's modified position in terms of its submissions on Noise and Subdivision Chapters;

(d) Reverse sensitivity effects;

2. STATUTORY TESTS FOR DISTRICT PLAN REVIEW

2.1 The legal tests applicable to the inclusion of provisions in a District Plan are summarised in Appendix A.

2.2 The summary is in line with *Long Bay Great Park Society v North Shore City Council* and subsequent cases such as *Colonial Vineyard v Marlborough District Council*[1] as well as relevant Resource Management Act (**RMA**) amendments since then.

2.3 It also includes the additional tests as a result of the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 (**Amendment Act**) for those provisions proposed to be part of the IPI and therefore subject to the ISPP.

1 [2014] NZEnvC 55 at [17].

3. ALLOCATION OF PROVISIONS ISSUE – SCHEDULE 1 PROCESS VERSUS ISPP

3.1 As noted in our earlier Memorandum of Counsel dated 30 January 2023,[2] WIAL considers that a number of provisions have been incorrectly allocated. We rely on those submissions and will not repeat them here.

3.2 Appendix B of Ms O'Sullivan's evidence includes her recommendations as tracked provisions for the Noise Chapter and also tracks where WIAL considers the allocation should be corrected.

3.3 In terms of the Noise and Subdivision provisions as they relate to the Airport, the test is relatively simple. If a provision relies on the Airport as a qualifying matter, then it should be considered via the ISPP.

3.4 In terms of the Natural Hazards Chapter, is it difficult to comprehend how the entire chapter could be notified as part of the IPI and therefore subject to the ISPP. In our submission, this Chapter should be subject to the Schedule 1 process and certainly in relation to areas (such as the Airport Zone) which are not subject to the mandatory outcomes in Section 80E (ie. are not within the scope of an IPI).

3.5 In terms of the Earthworks Chapter, in our submission the ISPP should not apply in relation to areas (such as the Airport Zone) which again are not subject to the mandatory outcomes in Section 80E (ie. are not within the scope of an IPI).

4. INTERRELATIONSHIP BETWEEN DISTRICT PLAN RULES AND WIAL DESIGNATIONS/ PDP PROCESS

4.1 Ms O'Sullivan outlines the nature of WIAL's Designations in her evidence in chief.

4.2 In accordance with Section 176 of the RMA, these Designations (which include a number of wide ranging conditions) will manage the bulk of WIAL's activities and operations including noise from aircraft.

2 At paragraph [7.3].

4.3 The Outline Plan process provided by section 176A of the RMA will for the most part guide the development of the Airport (with the exclusion of the PDP's Rongotai Ridge Precinct within the Airport zone which is not designated).

4.4 Accordingly the PDP rules will only apply to the extent that the designated land "*is being used for a purpose other than the designation purpose*".[3]

4.5 Generally designations are standalone features of a district plan[4] and are considered to be an enactment for the purposes of interpretation.[5] Accordingly, in my submission, any interrelationship between a designation and a district plan rule or other method needs to be clear and carefully considered and vice versa.

4.6 This means that district plan rules should not duplicate designation conditions (especially not to numbered conditions where these may well change over time) unless they are being put in place for circumstances where the designated land is <u>not</u> being used for the designation purpose (referred to in the s42A Report as applying to "third party activities"[6]) so that they are underlying zone rules and are capable of being enforced.

4.7 I note in this regard that the S42A Report proposes to reduce this type of duplication, however, a couple still remain where the content of the rule can only relate to WIAL and where no third party can be involved (see for instance Noise S3). The other example is where the drafting refers directly to designation conditions that may change (and in so doing amend the district plan without the proper statutory process of a plan change) and refer to methodologies that cannot be applicable to individual third party activities (see Noise-R13). These are shown as being proposed to be deleted in Ms O'Sullivan's Appendix B.

4.8 Ms O'Sullivan also suggests an amendment to the Introduction to the Noise Chapter (in the "Other relevant District Plan provisions" section) so that plan users are made

3 Section 176(2) RMA.
4 Para [15] Neil Construction.
5 Para [29] ibid.
6 See for example Ashby para 196.

aware of this interrelationship, as it known that this concept is not readily understood by lay people, leading to confusion and misunderstandings.

4.9 There is one important (and common in terms of other major New Zealand airports) interrelationship to understand and that is the concept of aircraft noise control boundaries. In the case of Wellington Airport currently, this is the Air Noise Boundary (**ANB**).

4.10 Condition 23 of Designation WIAL5 requires that Aircraft Operations are managed by WIAL so that the average exposure level does not exceed 65dBA outside the ANB shown within the District Plan maps.

4.11 In addition, the ANB (which in the PDP delineates the outer edge of the Inner Air Noise Overlay as part of the Air Noise Overlay) identifies where there are land use controls for the development of noise sensitive activities due to aircraft noise exposure.

4.12 As the Panel will be aware the PDP proposes, in addition to the ANB, a new noise control boundary which is set at 60 dBA (as provided by WIAL) which is called the Outer Air Noise Overlay and forms part of the Air Noise Overlay. This is where the noise exposure from aircraft is expected to be between 60 and 65 dBA. Its inclusion in the PDP is more in line with the New Zealand Standard for *Airport Noise Management and Land Use Planning NZ6805:1992* which includes the concept of an Outer Control Boundary although this is set at a lower noise exposure level of 55 dBA.

4.13 I note that the timing of WIAL's Designation decisions last year and the preparation/ notification of the PDP meant that the Designation conditions were not able to refer to the newly proposed 60 dBA boundary because the PDP had not been notified yet.

4.14 Instead the Settlement Agreement between the parties to the designation appeals requires WIAL to seek alterations to the Designations once the relevant provisions are operative to:

(a) refer to and align with the updated ANB and new 60 dBA contour in the designation where appropriate; and

(b) include conditions that require WIAL to:

(i) continue the acoustic mitigation package of the Quieter Homes Programme within the updated ANB; and

(ii) expand the programme to the 60 dBA contour through the provision of mechanical ventilation at a rate that accords with the growth in the contour over time.

4.15 Finally for the sake of completeness and understanding, WIAL 4 (Main Site Area) and WIAL 5 (East Side Area) were inserted into PDP as required by Section 175 of the RMA without using Schedule 1. As such, they are not subject to this PDP process.

5. WIAL's MODIFIED POSITION IN TERMS OF NOISE AND SUBDIVISION

5.1 Ms O'Sullivan's evidence sets out in detail a modified position proposed by WIAL in relation to the rules and standards affecting the Airport in the Noise and Subdivision Chapters, having considered the S42A Report and submissions. Ms O'Sullivan's recommendations are set out in her Appendix B and C (using the S42A Report version of the provisions).

5.2 We note there is no issue of scope as the proposed amendments represent "lessor relief" than what was sought in WIAL's original submission.

Definitions

5.3 There is now general agreement between the Council and WIAL planners with regard to definitions. Ms O'Sullivan has explained and recommended some further minor changes in her evidence and Appendix B.

5.4 We still find the Definition of "Air Noise Overlay" somewhat awkward in that it includes two areas within the Overlay that are also called overlays (namely the Inner Air Noise Overlay and the Outer Air Noise Overlay). We accept this has probably come about

due to the mechanics required by the New Zealand Planning Standards, but perhaps a simple solution would be to rename the Air Noise Overlay as the Air Noise Overlays which would provide at least some distinction and further clarity.

5.5 Ms O'Sullivan has also recommended two new definitions for the purpose of clarity, namely "High Noise Area" and "Moderate Noise Area". As the Noise provisions are currently drafted, these areas are indirectly defined through the NOISE-P3 and NOISE-S5 which is clumsy and confusing.

6. OBJECTIVES AND POLICIES

6.1 WIAL's original submission sought additional objectives and policies specific to the protection of the Airport and its operations. These are opposed by the Section 42A report writers and submitters.

6.2 In relation to the objectives, Ms O'Sullivan has accepted that additional airport specific objectives may not be required. She has instead recommended an amendment to NOISE-O1 so that the heading and the body of that objective are more aligned with the management of noise generation and its effects and to recognise that the protection of amenity values will not always be achievable depending on the location.

6.3 In relation to the policy suite Ms O'Sullivan is still recommending that additional airport specific policies are included as set out in her Appendix B. This is opposed by the S42A report writers on the basis that the Noise Chapter does not seek to "unduly restrict urban development to aircraft noise in affected areas"[7] and the Chapter "must be to guide an equitable approach to the management of effects".[8]

6.4 In relation to the supposed intention of the Noise Chapter not seeking to unduly restrict urban development, in our submission, this does not in fact reflect the Objectives of the Chapter even as currently drafted or in the text of the Chapter's Introduction.

7 Ashby at para 131 and Hunt at para 44.
8 Ashby.

6.5 WIAL is seeking additional specific policies in relation to restrictions on noise sensitive activities with the Air Noise Overlay to further express and realise the objectives and so that the proposed rules relate back to and are justified by those specific policies.

6.6 Section 75(1) clearly sets out the "cascade" required for provisions in district plans such that objectives are required for the district (that, in terms of s32, must achieve the purpose of the Act), policies are required that implement the objectives and rules must implement the policies. This is further supported by section 76(1) which requires that rules must achieve the objectives and policies of a plan.

6.7 It is also essential for there to be some specificity in relation to policy provisions so that where resource consents are considered in the future (including where the matters of discretion include the relevant policies), there is sufficient and relevant guidance within the objective and policy framework.

6.8 In our submission, the S42A approach in this regard relies on the rules proposed which do not appropriately achieve or assist to implement the objectives and policies.

6.9 More importantly, as currently drafted, the policies do not appropriately recognise the important risk of reverse sensitivity effects in terms of aircraft noise exposure in the Air Noise Overlay. The S42A approach amounts to the "tail seeking to wag the dog"; ie the rules are directing the objective and policy framework rather than the other way around, as required by the top down approach of Section 75, as highlighted above.

6.10 In our submission, the reverse sensitivity risk has been downplayed by the S42A authors and submitters and is a topic we return to in more detail below. This is particularly so in the context of outdoor amenity which is all but ignored by the S42A authors and submitters.

6.11 In relation to the assertion in the S42A Report that the Noise Chapter must be intended to guide an equitable approach to the management of effects, this supposed intention is not borne out by the objectives and policies. We note that this matter of equity was also raised in the "Statutory and other non-RMA considerations" of the s42A Report[9]

9 Ashby para 36 a.

where it was asserted that regard should be given to the issue of equity when making decisions on the Noise Chapter.

6.12 Regardless of the fact that it is unclear what the S42A authors mean by "equity" in this context, especially it terms of how it would be evaluated or assessed when considering resource use, in our submission the concept is outside of the RMA statutory framework.

6.13 Section 72 of the RMA states that the purpose of a district plan is to assist a council to carry out its functions in order to achieve the purpose of the Act. Those functions are contained in section 31 and include giving effect to the RMA as well as a wide range of considerations to achieve integrated management.

6.14 None of these statutory provisions, Section 32 or Section 5 of the Act refer to an equitable approach. In our submission, it follows that the approach, while admirable/ aspirational, sits outside of the purview of the decision making tests under the RMA as set out in our Appendix A to these legal submissions.

6.15 In our submission, Mr Ashby's approach has meant the lens through which he has drafted the provisions and assessed WIAL's submission (and others) is imbalanced and not in accordance with the relevant statutory tests. This should be considered by the Panel when deciding which provisions are the most appropriate to achieve the purpose of the Act and the relevant Objectives for inclusion in the District Plan.

7. METHODS

7.1 Ms O'Sullivan sets out a modified approach in relation to the proposed Rules and Standards of the Noise and Subdivision Chapters and again her recommendations are included in her Appendix B and C as tracked changes as well as summarised at paragraphs 1.4 to 1.7 of her evidence.

7.2 Importantly, Ms O'Sullivan has considered the S42A Report, submissions, as well as the current development around the Airport and has stepped back from the level of

restriction proposed in the original submission in terms of development within the Air Noise Overlay.

7.3 In our submission, the reverse sensitivity effects in terms of the methods have again been downplayed by the S42 authors and submitters and we turn to that topic below. Little to no consideration has been given to the issue of adverse effects on outdoor amenity due to aircraft noise exposure which cannot be mitigated and which would be enabled by the PDP and the s42A provisions. Our legal analysis above in relation to the objectives and policies is also pertinent with the S42A rule and standards approach not achieving the objectives and policies of the PDP or the purpose of the RMA.

Acoustic Mitigation Standards:

7.4 The disagreements as between the Acoustics experts in terms of the appropriate acoustic mitigation standards are for the most part technical in nature. In our submission, it may be beneficial for the experts to caucus on these matters to see whether these differences can be resolved for the assistance of the Panel's deliberations.

7.5 The experts disagree about whether an "indoor sound level" approach should be preferred over the "standardised level difference" approach of the PDP. In our submission, quite apart from the technical disadvantages raised in the evidence of Mr Humpheson and Dr Chiles, the fact that the indoor sound level approach is the standard approach for New Zealand airports is an important factor. In the Wellington context, this is also the current District Plan approach and is successfully used by the Quieter Homes Programme. This is another important factor to be considered when deliberating about the relative efficiency and effectiveness of the provisions.

8. REVERSE SENSITIVITY

8.1 Reverse sensitivity effects and how they should be managed through the PDP provisions go to the heart of the disagreement between WIAL and its experts and the s42A authors and some submitters.

8.2 The concept of reverse sensitivity is a well-accepted concept in resource management. The GWRPS defines it as:

> *Reverse sensitivity means the vulnerability of an existing lawfully established activity to other activities in the vicinity which are sensitive to adverse environmental effects that may be generated by such existing activity, thereby creating the potential for the operation of such existing activity to be constrained.*

8.3 The leading case on reverse sensitivity is still *Winstone Aggregates v Matamata-Piako District Council*,[10] in which the Environment Court considered buffer zones in a proposed district plan around intensive farm sites. The Court set out a range of principles concerning reverse sensitivity and when restrictions on surrounding properties may be appropriate. These are:

(a) …activities should internalise their effects unless it is shown, on a case by case basis, that they cannot reasonably do so;[11]

(b) There is a greater expectation of internalisation of effects of newly established activities than of older existing activities;[12]

(c) Also, the older activities may be restricted by their sites which may have little scope for within boundary buffers;[13]

(d) …having done all that is reasonably achievable, total internalisation of effects within the site boundary will not be feasible in all cases and there is no requirement in the RMA that that must be achieved;[14]

(e) To justify imposing any restrictions on the use of land adjoining an effects emitting site, the industry must be of some considerable economic or social significance locally, regionally or nationally.[15]

10 (2004) 11 ELRNZ 48.
11 At [7].
12 At [8].
13 At [8].
14 At [9].
15 At [10].

8.4 Further, the Environment Court in *Auckland Regional Council v Auckland City Council*, stated that land use controls to protect industry against reverse sensitivity fall clearly within a territorial authority's functions under the RMA and that it was not appropriate to leave *"…promoters of enterprises to judge their own locational needs, not protecting them from their own folly…"*.[16]

8.5 In the case of Wellington Airport, it is clearly an older existing activity on a constrained site which has continued to internalise effects as far as possible. This internalisation has been through the former Operative Plan provisions (now via the Designations) in particular through the imposition of curfewed operational hours and restrictions on the amount of noise exposure. Importantly the Airport and airlines have funded the Quieter Homes Programme to provide acoustic mitigation and to purchase the most noise affected properties within the ANB and will extend acoustic mitigation out to the 60 dBA boundary in the future.

8.6 It is also clear that the Airport is of regional and national significance and that the Airport must remain where it is, as other alternatives have long been ruled out as being impracticable. Therefore, in terms of the *Winstone Aggregates* tests, there are strong reasons for appropriate controls on new noise sensitive development to be imposed. This is particularly so when considering the issue of outdoor amenity. This effect is not able to be mitigated and is a constant theme of complaints and submissions people make about airport noise.

8.7 The reverse sensitivity effects that the Airport has and will face are often bought about by the existence of complaints. The Court in *Independent News Auckland Ltd v Manukau City Council* (2003) 10 ELRNZ 16 stated:

> *…complaints can be the first sign of a ground swell of opposition that can chip away at the lawfully established activity. It is this ground swell and its growth which can create potential to compromise the sustainable management of the established activity.*
>
> *Complaints, whether justified or unjustified in terms of the provisions of the district plan, are just one of the elements that contribute to the reverse sensitivity effect as claimed by the owners of the Airport. As we understand the Airport's case, it is the combination*

16 (1997) 3 ELRNZ 54 at pages 61, [20-25] and 62, [10] and [34].

of a number of elements including complaints, lobbying of politicians, submissions on future district plans and the like which create the reverse sensitivity effect.

8.8 The evidence for WIAL and BARNZ clearly outlines how reverse sensitivity effects have affected and are affecting Wellington Airport and other New Zealand airports. In the Wellington context, complaints about the Airport and aircraft noise are on the rise which makes the management of this effect more important, especially in circumstances where the noise exposure will increase over time in the Air Noise Overlay.

8.9 Accordingly, WIAL strongly disagrees with Kāinga Ora's case which has submitted that the concept of reverse sensitivity should not be referred to all but rather "refined to apply to health and amenity effects" on the community. In our submission, this approach is not only out of touch with reality and existing authority but also misses the point of reverse sensitivity effects. They are effects on the emitter, in this case the Airport, not the receiver. Kāinga Ora's submission and position also ignores the fact that the efficient operation of the Airport is a qualifying matter under the Amendment Act which must include the notion of reverse sensitivity effects and the PDP's policy framework acknowledging the importance of Regionally Significant Infrastructure.

8.10 We accept that the management of reverse sensitivity inevitably involves making a choice between competing rights and interests. In our submission, the Airport and airlines contribution to the economic and social wellbeing of the district region and nation, as well as their contribution in terms of acoustic mitigation within the Air Noise Overlay warrant the imposition of land use and subdivision controls to the extent recommended in Ms O'Sullivan's evidence.

9. CONCLUSION

9.1 Wellington International Airport is recognised as being Nationally Significant Infrastructure in the National Policy Statement for Urban Development 2020 (**NPSUD**) and Regionally Significant Infrastructure in the Greater Wellington Regional Policy Statement (**RPS**) as well as the PDP.

9.2 The Airport is an important existing strategic asset for the District, Region and Nation. It provides a national and international transport links for the local, regional and international community and has a significant influence on the district and regional economy.

9.3 As such the Airport is a fundamental part of the social and economic wellbeing of the community and should be properly protected from reverse sensitivity effects.

9.4 Enabling the level of intensification within the Air Noise Overlay as proposed in the PDP and by the S42A provisions and/or Kāinga Ora will not properly or sufficiently protect the Airport from reverse sensitivity effects and therefore not ensure the efficient operation of the Airport as national significant infrastructure. Ultimately, it will be detrimental to the Air Noise Overlay community and the wider community, as well as the Airport.

9.5 The amended provisions recommended by Ms O'Sullivan are not out the ordinary in a New Zealand Airport context and also take into account the particular Wellington context and history at the Airport. The provisions proposed are designed to protect the community as well the Airport with the ability to allow some noise sensitive activities where is appropriate to do so.

9.6 In our submission, Ms O'Sullivan's provisions represent the most appropriate way to achieve the purpose of the RMA through her amendments to the Objectives. In turn, her additional policies and amended rules/standards will better achieve those Objectives with the proposed restrictions on development with the Air Noise Overlay being necessary to enable the efficient operation of the Airport both now and for the future.

DATED at Wellington this 28th day of July 2023

Amanda Dewar / Madeline Ash
Counsel for WIAL

Appendix A:

Test from *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] with updates, shown in the far right-hand column, to capture amendments made by the Resource Management Amendment Act 2013[17]			
Requirement:	*Relevant RMA Sections*	*Comments*	*Updates from amendments made by the Resource Management Amendment Act 2013*
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.	74(1), 31, 72		Requirements 1 and 2 need to be read subject to section 74(1) of the RMA which states: A territorial authority must prepare and change its District Plan in accordance with – a. Its functions under section 31; b. The provisions of Part 2; c. A direction given under section 25A(2); d. Its obligation (if any) to prepare an evaluation report in accordance with section 32; e. Its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and f. Any regulations
2. The district plan (change) must also be prepared in accordance with any regulation (there are none at present) and any direction given by the Minister for the Environment.	74(1)		
3. When preparing its district plan (change) the territorial authority must give effect to any national policy statement or New Zealand Coastal Policy Statement.	75(3)	The national policy statements currently in place include: • National policy statement for freshwater management • National policy statement for greenhouse gas emissions from industrial process heat • National policy statement for highly productive land	

17 Amendments from the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 are set out below in a second table.

Test from *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] with updates, shown in the far right-hand column, to capture amendments made by the Resource Management Amendment Act 2013[17]			
Requirement:	*Relevant RMA Sections*	*Comments*	*Updates from amendments made by the Resource Management Amendment Act 2013*
		• National policy statement for indigenous biodiversity • National policy statement for renewable electricity generation • National policy statement on electricity transmission • National policy statement on urban development • New Zealand coastal policy statement	
4. 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.	74(2)(a)(i), 75(3)(c)	The PDP needs to give effect to the Operative Regional Policy Statement for the Wellington Region 2013 and PDP must also have regard to all provisions of the Operative Regional Policy Statement for the Wellington Region 2013 to be incorporated through Proposed Change 1 that are not yet operative.	
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 order; and b. Must have regard to any proposed regional plan on any matter of regional significance, etc.	75(4), 75(3)(c)		
6. When preparing its district plan (change) the territorial authority must also: a. Have regard to any relevant management plans and strategies under other Acts, and to any	74(2)(b), 74(2)(c), 74(2A), 74(3)		

Test from *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] with updates, shown in the far right-hand column, to capture amendments made by the Resource Management Amendment Act 2013[17]			
Requirement:	*Relevant RMA Sections*	*Comments*	*Updates from amendments made by the Resource Management Amendment Act 2013*
relevant entry in the Historic Places Register and to various fisheries regulations to the extent that their context has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities; b. Take into account any relevant planning document recognised by an iwi authority; and c. Not have regard to trade competition or the effects of trade competition.			
7. The formal requirement that a district plan (change) must also state its objectives, policies and the rules (if any) and may state other matters.	75(1), 75(2)		
Requirements for Objectives and Policies			
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.	74(1), 32(3)(a)		The section 32 requirements, relevant to all of requirements 8, 9 and 10, are as follows: (1) An evaluation report required under this Act must - … a. Examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by –
9. The policies are to implement the objectives, and the rules (if any) are to implement the policies;	75(1)(b), 75(1)(c), 76(1)		
10. Each proposed policy or method (including each rule) is to be examined,	32(3)(b)		

Test from *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] with updates, shown in the far right-hand column, to capture amendments made by the Resource Management Amendment Act 2013[17]			
Requirement:	*Relevant RMA Sections*	*Comments*	*Updates from amendments made by the Resource Management Amendment Act 2013*
having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives 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; 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.			i. Identifying other reasonably practicable options for achieving the objectives; and ii. Assessing the efficiency and effectiveness of the provisions in achieving the objectives; and iii. Summarising the reasons for deciding on the provisions; and … (2) An assessment under subsection (1)(b)(ii) must – a. identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for – i. Economic growth that are anticipated to be provided or reduced; and ii. Employment that are anticipated to be provided or reduced; and b. If practicable, quantify the benefits and costs referred to in paragraph (a); and c. Assess the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions. … (4) If the proposal will impose a greater or lesser prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that

Test from *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17] with updates, shown in the far right-hand column, to capture amendments made by the Resource Management Amendment Act 2013[17]			
Requirement:	*Relevant RMA Sections*	*Comments*	*Updates from amendments made by the Resource Management Amendment Act 2013*
			standard, the evaluation report must examine whether the prohibition or restriction is justified the circumstances of each region or district in which the prohibition or restriction would have effect.
Relevant considerations in relation to rules			
11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment.	76(3)		
12. Rules have the force of regulations.	76(2)		
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive than those under the Building Act 2004.	76(2A)		
14. There are special provisions for rules about contaminated land.	76(5)		
15. There must be no blanket rules about felling of trees in any urban environment.	76(4A), 76(4B)		
Other statutes			
16. Finally territorial authorities may be required to comply with other statutes.			

Additional requirements arising from sections 77G to 77L of the RMA:[18]	**Sections of the RMA:**
MDRS Incorporation Requirements:	
The MDRS must be incorporated into all residential zones, except: (a) large lot residential zones; (b) areas predominantly urban in character that the 2018 census recorded as having a resident population of less than 5,000 (unless the Council intends the area to become part of an urban environment); (c) offshore islands; and (d) settlement zones.	77G(1), 2
Local authorities may modify the requirements of the MDRS to enable a greater level of development than provided for by the MDRS by: (a) omitting 1 or more of the density standards set out in Part 2 of Schedule 3A; (b) including rules that regulate the same effect as a density standard set out in Part 2 of Schedule 3A, but that are more lenient.	77H(1), 77H(3)
The section 32 report must: (a) describe how the provisions allow the same or more development than the MDRS; (b) describe how modifications to the MDRS are limited to only those necessary to accommodate qualifying matters; and (c) describe how modifications to the MDRS apply to any spatial layers relating to overlays, precincts, specific controls, and development areas, including operative district plan layers and new proposed spatial layers.	77J(4)
Policy Incorporation Requirements:	
Specified territorial authorities must give effect to policy 3 or policy 5 in every residential zone in any area that (a) is, or is intended to be, predominantly urban; and (b) is, or is intended to be, part of a housing and labour market of at least 10,000 people.	77G(2), 77F

18 The below are re-summarised, clarified versions of the requirements introduced by the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021.

Additional requirements arising from sections 77G to 77L of the RMA:[18]	**Sections of the RMA:**
A specified territorial authority may create new residential zones or amend existing residential zones.	77G(4)
A specified territorial authority must include the objectives and policies set out in clause 6 of Schedule 3A.	77G(5)(a)
A specified territorial authority may include objectives and policies in addition to those set out in clause 6 of Schedule 3A, to— (a) provide for matters of discretion to support the MDRS; and (b) link to the density standards to reflect how the territorial authority has chosen to modify the MDRS in accordance with section 77H.	77G(5)(b)
Incorporation of qualifying matters:	
A specified territorial authority may make the MDRS and the relevant building height or density requirements under policy 3 less enabling of development in relation to an area within a relevant residential zone only to the extent necessary to accommodate 1 or more of the following qualifying matters that are present: (a) a matter of national importance under section 6; (b) a matter required to give effect to a national policy statement (other than the NPS-UD) or the New Zealand Coastal Policy Statement 2010; …. (e) a matter required to ensure the safe or efficient operation of nationally significant infrastructure; (f) open space provided for public use in relation to open space land; (g) the need to give effect to a designation or heritage order in relation to land subject to the designation or heritage order; (h) a matter necessary to implement, or ensure consistency with, iwi participation legislation; (i) the requirement in the NPS-UD to provide sufficient business land suitable for low density uses to meet expected demand; (j) any other matter that makes higher density, as provided for by the MDRS or policy 3, inappropriate in an area, provided section 77L is satisfied.	77I
The section 32 report in relation to the proposed amendment to accommodate a qualifying matter must: (a) demonstrate why the territorial authority considers—	77J(3)

Additional requirements arising from sections 77G to 77L of the RMA:[18]	**Sections of the RMA:**
i. that the area is subject to a qualifying matter; and ii. that the qualifying matter is incompatible with the level of development permitted by the MDRS or provided for by policy 3; and (b) assess the impact that limiting development capacity, building height, or density will have on the provision of development capacity; and (c) assess the costs and broader impacts of imposing those limits	
A matter is not a qualifying matter under section 77I(j) unless the section 32 report also: (a) identifies the specific characteristic that makes the level of development provided by the MDRS inappropriate in the area; and (b) justifies why that characteristic makes that level of development inappropriate in light of the national significance of urban development and the objectives of the NPS-UD; and (c) includes a site-specific analysis that— i. identifies the site; and ii. evaluates the specific characteristic on a site-specific basis to determine the geographic area where intensification needs to be compatible with the qualifying matter under section 77I(j); and iii. evaluates an appropriate range of options to achieve the greatest heights and densities permitted by the MDRS or provided for by policy 3, while managing the specific characteristics.	77L
For existing qualifying matters (a matter that is not a qualifying matter under section 77I(j) and is operative in the relevant district plan when the IPI is notified), instead of the above requirements of the section 32 report, territorial authorities may instead: (a) identify by location (eg. mapping) where an existing qualifying matter applies; (b) specify the alternative density standards proposed for that areas; (c) identify in the report why the territorial authority considers that 1 or more existing qualifying matters applies to those areas; (d) describe how for a typical site in that area the level of development that would be prevented by accommodating the qualifying matter, in comparison with the MDRS; (e) notify the existing qualifying matters in the IPI.	77K