

2013

# Plan Steps

Writing Provisions for Regional and District Plans



## **Writing Provisions for Regional and District Plans**

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The way in which RMA plans are written can greatly affect their efficiency, effectiveness, and ease of administration and enforcement. Writing an effective, enforceable and user-friendly plan requires robust processes to be followed, skill, and attention to detail. This guidance note is a companion guidance note to 'Structuring and Organising Regional and District Plans' and provides a starting point for those writing provisions.

### **Guidance note**

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A checklist is provided for practitioners involved in writing plan provisions. The example checklist is designed to be adapted by individual local authorities to meet their particular drafting requirements and practices and could form part of an internal plan drafting guideline or protocol.



## Introduction

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Plans and plan provisions have evolved significantly since the first generation of plans under the RMA were notified. Submissions, case law, and experience in plan administration have assisted in improving the robustness of provisions and the workability of plans, though sometimes at a significant cost. The first generation of plans resulted in variable format and wording as councils explored ways to meet RMA requirements. This guidance note builds on the lessons learned during the preparation and implementation of first-generation RMA plans and reduces the need for practitioners to revisit lessons of the past, while also moving towards a more consistent style of plan provision drafting.

A degree of commonality and consistency in how plan provisions are written is considered important to:

- assist those complying with, or implementing, plans in understanding how significant case law may impact on any given plan
- allow councils and consultants to more readily share and adapt provisions for use in other plans
- allow staff transferring from one council to another to quickly adapt to interpret the plan of their new employer
- allow similarities and differences between plans to be quickly identified and evaluated by those preparing, using or monitoring plans
- reduce interpretation issues from plan to plan
- make it easier for central government to prepare national policy statements and national environmental standards that better align with the content and provision writing style of regional and district plans.

### Before starting: Some overarching principles

**Be aware of the bigger picture:** The relationship of RMA plans with Long Term Plans provides new inputs, influences and opportunities. Similarly the requirement to enforce the observance of national environmental standards, ['give effect to'](#) national policy statements and regional policy statements, take into account relevant iwi planning documents, [statutory acknowledgements](#), and consider combined plans (in certain circumstances) and other documents, [including non-RMA documents](#); requires a high level of awareness and cooperation between regional and territorial authorities.

**Draft 'top down' but remember implementation is 'bottom up':** It is important to consider both top-down and bottom-up approaches in drafting provisions, so as to demonstrate a logical flow showing how issues have been dealt with while maintaining clear linkages from the rules to policies and objectives. Issues need to be identified and decisions need to be made about desired management outcomes before solutions are identified. The top-down approach to drafting and bottom-up approach to interpretation are also inherent in cascades used in the drafting and structuring of plan rules, and in checking linkages between plan provisions.

**Plain English drafting:** While the principal purpose of a plan is to assist local authorities in carrying out their functions, people from many differing backgrounds will read and use it. Adherence to ['plain English'](#) drafting greatly assists all plan users in interpreting, administering, implementing, and complying with plan provisions. The plain English



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drafting style has also been adopted as the recommended standard for New Zealand legislation.

**Internal consistency:** There may be changes to drafting personnel over the period plans are written and amended. As each person has their own writing style, there is a risk of plans becoming internally inconsistent, with provisions using different terms, phrases, standards, or expressions. Plans may also be altered as a result of decisions on submissions or the resolution of appeals leading to a number of 'one-off' provisions. Both situations can lead to problems of interpretation, implementation and, ultimately, decreased plan efficiency and effectiveness. A combination of reviews, drafting protocols, and style champions can assist, depending on the resources available. For more information on approaches see [promoting internal consistency in plans](#) and the example [drafting checklist](#).

**Have regard to monitoring and enforcement:** There are both legal and useful practical reasons for considering how plan provisions will be monitored and enforced at the time those provisions are drafted. Developing the monitoring strategy (or monitoring indicators) alongside the plan provisions can:

- assist in improving the clarity and enforceability of provisions (e.g. how will the council know when provisions are being complied with)
- weed out draft provisions (or possible monitoring indicators) that may be unnecessary or impractical
- better align s35(2A) (plan effectiveness) reports with plans
- inform plan users of [environmental results expected](#)
- ensure that the monitoring strategy aligns to the plan so that there is an information base available as to how well provisions are working to inform the next change or review of the plan.

### Deciding what provisions go into a plan

Although not required including issues in plans can help inform and justify objectives, policies and rules that follow. Including methods other than rules and explanations in plans also has some merit. Matters such as principal reasons, procedures for monitoring, information requirements, and processes for dealing with cross-boundary issues are generally explanatory or procedural in nature. While these matters contribute important information to the [RMA planning cycle](#), they could be included in other documents such as guides to plans, monitoring reports, triennial agreements, or internal policies.

This guidance note primarily concerns itself with issues, objectives, policies and rules, but for completeness key policy framework elements are included (e.g. methods other than rules, principal reasons and explanations, environmental results expected, planning maps).



## Writing issues, objectives and policies

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### What is an issue?

An issue is an existing or potential problem that must be resolved to promote the purpose of the RMA. However issues can also be opportunities to assist in promoting the purpose of the RMA.

Environmental issues usually concern conflicts between users of resources, allocation of resources, or effects on the environment. Such issues may represent an existing problem, or a potential problem arising from likely future resource use. An issue could relate to the cumulative effects of many resource uses or from a series of individual proposals. An issue could also relate to the need to take positive action to correct the absence of policy or policy failures, or to promote positive effects (for example enhancement or restorative projects).

Issues need to be derived from evidence and facts, and those concerning values (such as amenity): by consultation. Potential issues should be tested to see if they need to be included in, and managed through, the plan.

### Tips for writing issues

The expression of issues in plans should:

- identify an environmental problem (or opportunity for improvement) that the local authority can address under the RMA
- identify the cause of the problem or scope of the opportunity (where this is known)
- be specific to the district or region rather than abstract and generalised (even though the issue may also occur elsewhere)
- be succinct (explanations could be used if more detail is essential)
- include **what** is being affected, **how** it is being affected, and **where**
- if the issue is intermittent in nature or it relates to a specific timeframe or event, include information related to the circumstances that give rise to the issue, or its duration and frequency (i.e. 'when').

Avoid:

- restating the provisions of the RMA as issues (e.g. 'Maintenance and enhancement of amenity values') - think about what the RMA means for the region or district and its resources and what may impact on those resources
- only stating the issue as a topic (e.g. 'water contamination')
- issues outside the scope of the RMA (e.g. 'the promotion of tourism in YYYY')
- defining the desired outcome (that is the role of objectives)
- focusing only on issues internal to the council (e.g. 'lack of information on XXX')
- pre-empting the solution (e.g. 'the need for a better...') - issues should be identified before the solution is found, not after.

See [examples of how issues could be written](#).

## Writing good objectives

An objective is a statement of what is to be achieved through the resolution of a particular issue. Objectives clearly state what is aimed for in overcoming the issue or promoting a positive outcome, or what the community has expressed as being desirable in resolving an issue. Objectives tend to be positively worded and need to be clear enough to provide targets that policies seek to achieve.

Where plan drafters choose not to include issues in their plans the objective should be worded in such a way that the issue that gave rise to the objective is evident. Alternatively, if the issue is clearly stated in another document, a clear reference could be made to the issue and the document where it can be found.

In writing objectives it is good practice to:

- be specific
- write the objective in the form of a sentence that states **what** is to be achieved, **where** and **when**
- relate the objective to the issue (if included in the plan) in terms of subject matter and use of consistent terminology or phrases; or
- (where issues are not included in the plan) write the objective in such a way that readers can understand what the issue would have been
- write the objective in such a way that it is assessable (i.e. those people implementing and monitoring the plan will know when the objective has been met)

Avoid:

- simply restating the issue
- restating provisions in the RMA (the plan should demonstrate how the RMA is to be applied in managing matters at the regional or district level)
- short meaningless objectives (e.g. 'To provide for transport')
- stating how the objective is to be achieved (that is the role of policies)
- including detailed requirements, conditions or permissions in the objective (these should be in rules).

For an example of what objectives could look like, see the objectives in [example plan provisions](#).

## Writing good policies

Policies are the course of action to achieve or implement the objective (i.e. the path to be followed to achieve a certain, specified, environmental outcome). Policies are a course of action which could be either flexible or inflexible, broad or narrow. Policies of a directive nature, where little discretion is intended to be exercised, include words such as 'shall' or 'must'. For policies where it is intended to provide some flexibility discretion, use words like 'should' or 'may'.

Policies are implemented through methods (often plan rules) so policies need to be worded to provide clear direction to those making decisions on rules and those



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implementing methods. Because of the tests set out in s104D(1), the need to provide clear, strong, objectives and policies is particularly important when it is envisaged that the non-complying activity status will need to be used to manage a particular issue where consents should only be granted in exceptional circumstances. Ambiguity, or lack of strong direction, could risk setting the s104D(1)(b) test threshold too low, resulting in consents having to be granted where it would otherwise have been undesirable, or detrimental, to do so.

In writing policies it is good practice to:

- ask:
  - **how** will the objective be met by this policy?
  - **where** in the region or district will the policy apply?
  - **what** course of action is to be taken and when (under what circumstances)?
  - **who** is to comply with the policy and who is to implement the policy? (note that this question will be of particular interest to persons administering and having to give effect to an RPS)
- write policies according to the effects that need to be addressed
- test the draft policy with those who are most likely to implement it to see if they think it provides clear direction for making decisions and enables them to administer that policy in a consistent manner
- if a policy has several parts, make sure each part is clearly identifiable and [numbered](#).

Avoid:

- policies that simply restate the objective
- policies that incorporate thresholds or standards that change the consent class an activity may sit under (thresholds and standards should be in rules)
- policies written in form or nature of methods (e.g. "rules to protect amenity values...").

For an example of what policies could look like, see the policies in [example plan provisions](#).



## Writing effective and enforceable rules

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### The importance of good practice in rule writing

Under ss76(2) and 68(2), rules have the force and effect of a regulation (but are still subject to the Act). They must conform to common law principles and conventions regarding validity. Failure to conform could see the rule challenged: through submissions; during appeals against decisions on submissions; appeals on resource consents where the rule is the issue; declarations; or appeals against enforcement proceedings. Challenges to rules may be on one or more of the following grounds:

- being ultra vires (i.e. either, outside the scope of the RMA or outside the powers given to councils under the RMA)
- unlawful reservation of discretion
- uncertainty
- unreasonableness.

A poorly written rule could be declared void (in whole or in part) by a court, though it must be treated as valid until a decision is made that invalidates it.

### Rules for land use and other resources require drafting from different standpoints

Rules for land use under s9 require drafting from a different standpoint to those for activities concerning the coast (s12), beds of lakes and rivers (s13), water (s14) and discharges (s15).

In general, s9 states that no person may use land (including the surface of water in any river or lake) in any manner that contravenes a rule in a district plan (s9(2)), or regional plan (s9(1)). The implication here is that if there is no rule in a plan, then there is no need for restriction on the activity under s9 or a need to obtain a resource consent.

Sections 12, 13, 14 and 15 adopt the opposite approach. These sections say that the resources concerned may not be used unless expressly allowed by a resource consent, or a national environmental standard, or a rule in a plan where the rule does not contravene a national environmental standard. So there has to be a national environmental standard or a rule in a plan that allows activities of the nature envisaged in ss12-15, to occur.

### General good practice tips for writing rules

Rules should be worded clearly enough to enable the plan user to judge the meaning and effect of the rule at face value without having to resort to using explanations or seeking advice from those who wrote it.

It is considered good practice when writing rules to:

- be clear as to the activity status an activity will fall into should it not meet the requirements, conditions or permissions specified in the rule (i.e. the consequences of non-compliance). Using a [cascade](#) approach to organising provisions and rules can assist with this



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- ensure that rules link clearly back to the objectives and policies of the plan in a way that can be easily traced (sometimes drafting rules alongside objectives and policies can assist in checking flow, wording, and consistency while a cascade approach to checking may also assist)
- ensure the terminology and choice of words is the same throughout the rule, and is the same wherever the rule recurs throughout the plan
- test the proposed rules to see how clear they are, whether they have the desired effect, or have unintended side effects, or loopholes. Think about how the rule would work from the point of view of:
  - an applicant wanting to maximise development opportunities
  - an affected party wanting to minimise effects or prevent development
  - the person processing the consent (in terms of clearly understanding what is intended and required)
  - a council officer trying to monitor or enforce the rule.
- use consent processing and enforcement officers to assist in drafting and testing provisions. Ask them to run through some scenarios or actual consents to see if they can find gaps, overlaps with other rules, or other implementation or interpretation problems. It is desirable to test a range of both commonplace and uncommon consent applications to see how the provisions would operate in everyday situations; and whether uncommon applications result in unintended or illogical outcomes
- ensure that any standards or conditions that determine whether a consent is required are defined within the plan, or else reference an external document or definition that is not likely to change or be revoked
- obtain a legal review of the rules once they have been drafted.

### Avoid:

- rules that make the requirement for, or class of, a consent dependent on whether the approval of affected parties has been obtained
- rules that reserve discretion where none is intended or appropriate
- using bullet points in rules (if listing sub-clauses or other items, use numbers or letters to reduce the potential for misidentification)
- including requirements in rules for applicants to comply with other Acts or regulations
- repeating sections of the RMA verbatim in the plan (if those sections change, the plan may become inconsistent with the Act).

In the case of district plans, rules must apply to a defined area of a district (usually but not necessarily achieved by [zoning](#)). Common practice is for rules applying across a whole district or region to be contained in specific 'district or region-wide rules chapters' or for the rule to state that this is what is intended. Rules applying only to certain zones are usually contained solely within chapters dealing with those zones.

### Conditions, standards, and terms, requirements and permissions

Sections 77A and 87A describe the different types of activities that may be included in plans. These are:

- permitted activities
- controlled activities



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- restricted discretionary activities
- discretionary activities
- non-complying activities
- prohibited activities.

Under s77A(1)(c), local authorities may specify conditions in a plan or proposed plan but only if the conditions relate to the matters described in s108 or s220. Under s2, 'conditions' in relation to plans and resource consents, includes terms, standards, restrictions and prohibitions. There are no definitions for 'standards' or 'terms' but in common usage, 'standards' are used to describe thresholds of acceptability (and are therefore measurable and often quantifiable) while terms describe pre-requisite obligations with which a proposal must comply (often taking the form of actions required).

Section 87A states that 'requirements, conditions, and permissions' that are specified in a plan (or in the RMA or regulations) shall be complied with in respect of all activity classes (except prohibited activities).

One note of caution is that the use of the word 'conditions' in policies and rules can sometimes result in confusion with resource consent conditions. If there is any doubt use 'resource consent conditions' where applicable, and 'requirements, conditions and permissions' elsewhere in the plan.

### Permitted activities

A permitted activity is one that is described in the RMA, regulations (including a national environmental standard), or a plan as permitted. A resource consent is not required for the activity if it complies with any requirements, conditions, and permissions specified for the permitted activity. It is therefore important that councils are confident that compliance with any requirements, conditions, and permissions will adequately manage the effects expected (including cumulative effects). Note that a plan cannot include a rule that describes an activity as 'permitted' if that activity will, or is likely to, have a significant effect on a protected customary right (s85A). Regional coastal plans cannot include aquaculture activities in the coastal marine as permitted activities (RMA s68A).

It is good practice in writing permitted activities to:

- consider carefully what the impact of the [permitted baseline](#) will be before deciding on permitted activity status and any requirements, conditions, and permissions that qualify an activity for permitted activity status
- be clear about what permitted activity status will apply to and where it will apply (is it clear whether it applies throughout the region or district or, if only a part, which part?)
- specify any requirements, conditions, and permissions that need to be complied with, to qualify for permitted activity status. If all requirements, conditions, and permissions need to be complied with, state this as a general rule (e.g. "... are permitted in the ZX Zone provided they comply with the following requirements, conditions and permissions: ...")
- ensure any requirements, conditions, and permissions provide certainty to enable compliance to be objectively assessed.



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Avoid writing permitted activities in such a way that their status:

- becomes subject to the fulfilment of resource-consent type conditions (such as the lodgement of a noise management plan)
- is dependent on the decision of a third party.

[District Plan](#) and [Regional Plan](#) examples are provided.

### Controlled activities

A controlled activity is one that is described in the RMA, regulations (including a national environmental standard), or a plan as a controlled activity. The RMA, regulations or plan must specify:

- any requirements, conditions, and permissions with which the activity must comply
- the matters over which the consent authority has reserved control.

An application for a controlled activity cannot be declined (except if s106 applies). Councils need to consider whether effects of a development up to the maximum permissible under the proposed activity could be adequately managed through the matters of control and resource conditions proposed. There are two reasons for this requirement:

1. to identify the total cumulative effects that may occur from resource use and development occurring as controlled activities
2. more importantly, it also refers to a need to consider whether the matters of control can be effectively addressed through resource consent conditions.

Controlled activity consent applications may be notified, although it is common for them to be non-notified. A rule in the plan can expressly provide that the resource consent application must be notified or must not be notified or limited notified (s77D). In writing controlled activity rules it is good practice to:

- write rules so that it is clear as to what activities are controlled (either by listing or through any requirements, conditions, and permissions) and where in the district or region the controlled activity status will apply
- clearly specify any requirements, conditions, and permissions an activity needs to comply with to be a controlled activity
- check whether the matters over which the council has reserved control, will adequately deal with the likely adverse effects of a development at the maximum limits of any requirements, conditions, and permissions
- clearly specify the matters over which the local authority has reserved control for assessment purposes and conditions for the consent (note these should be clearly differentiated from the standards and terms to be complied with)
- if the matters over which council has retained control are very narrow, would make minimal changes to an application, and could be written as requirements, conditions, and permissions - then consider whether it is more appropriate to make the activity 'permitted' subject to those requirements, conditions, and permissions



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- consider whether the matters of control would unnecessarily 'skew' the decision-making process (for example, by unduly focusing on conservation values without allowing for alternatives or positive effects to be considered)
- consider whether the scope of the resource consent conditions that would be able to be imposed, could adequately address potential effects (e.g. conditions on height may be limited in their effectiveness)
- clearly state when applications for controlled activities are to be notified
- clearly state when applications for controlled activities are not to be notified or limited notified.

[District Plan](#) and [Regional Plan](#) examples are provided.

### **Restricted discretionary activities**

A restricted discretionary activity is one that is described in the RMA, regulations (including a national environmental standard), or a plan as a restricted discretionary activity. An application for a restricted discretionary activity can be declined or granted (with or without conditions). The RMA, regulation or plan must specify both:

- any requirements, conditions, and permissions to be complied with for the activity to be a restricted discretionary activity
- the matters over which the council has restricted its discretion.

Note that in relation to the second point, the matters of discretion are those matters the council can consider when determining to either decline a resource consent, or to grant consent and impose conditions. A council can consider RMA Part 2 matters in granting a consent.

An application for a restricted discretionary activity can be notified or non-notified. A rule in a plan can expressly provide that the application must be notified, or must not be notified or limited notified (s77D).

Care needs to be taken in specifying the matters over which a council restricts its discretion. If the restriction is too narrow then the council may not be able to set conditions on consents that avoid or mitigate significant adverse effects (for example a restricted discretionary activity that limits discretion solely to visual amenity matters of a large development may not be able to manage effects associated with traffic generation). Conversely, if the discretion is too wide (e.g. "any effects" or "any matters in chapters A-Z of this plan") the restriction on discretion becomes meaningless.

In writing rules for restricted discretionary activities it is good practice to:

- state what activities are restricted discretionary and where in the district or region the restricted activity status will apply
- state clearly any restrictions, conditions and permissions that need to be complied with for the activity to be discretionary
- state clearly the matters over which the council has restricted its discretion (in a separate list or paragraph if necessary). It is often useful to state these in terms of effects (e.g. traffic, noise, odour, dust, turbidity)
- state clearly when applications will be notified



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- state clearly when applications will not be notified or limited notified
- consider whether the discretion is so restricted as to 'skew' the decision-making process. (for example, they focus on conservation values without allowing for alternatives or positive effects to be considered).
- when writing matters of discretion for restricted discretionary activities (or matters of assessment in regard to associated policies) consider the positive effects or benefits that may accrue from granting consent as well as the adverse effects to be avoided, remedied or mitigated.

Avoid:

- making the matters over which discretion is restricted so wide as to make the restriction meaningless. Where the matters over which discretion is to be restricted are wide consider using the (unrestricted) 'discretionary' activity status instead
- using the restricted discretionary status for activities where the intent is to only grant consent in 'exceptional circumstances' (consider, for example, using the non-complying status with clear policy direction as to what 'exceptional circumstances' may be instead).

[District Plan](#) and [Regional Plan](#) examples are provided.

### **[Full] discretionary activities**

A discretionary activity is one that is described in the RMA, regulations (including a national environmental standard), or a plan as a discretionary activity. An application for discretionary activity can be declined or granted (with or without conditions).

Discretionary activities may:

1. be identified by listing and naming them explicitly (including any restrictions, conditions and permissions that have to be met to qualify for discretionary status)
2. be classified as such because of non-compliance with any restrictions, conditions and permissions for permitted, controlled, or restricted discretionary activities
3. be discretionary by virtue of there being no plan, proposed plan, relevant rule or resource consent classification for the activity (ss87B(1)(a) and (b))
4. be described in a proposed plan as prohibited but that rule is not yet operative (s87B(1)(c)).

An application for a discretionary activity can be notified or non-notified. A rule in a plan can expressly provide that the application must be notified, or must not be notified or limited notified (s77D).

Other reasons that may give rise to an activity being classed as discretionary in a plan:

1. where it is not suitable in all locations in a zone
2. where the effects of the activity are so variable that it is not possible to prescribe standards to control them in advance
3. where an activity defaults to discretionary because it cannot meet all the standards for a permitted activity



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4. where activities are not suitable in most locations in a zone or part of a zone but may be suitable in a few locations.

In writing rules for discretionary activities it is good practice to:

- state what activities are discretionary and where in the district or region the activity status will apply
- state clearly any restrictions, conditions and permissions that need to be complied with for the activity to be discretionary
- state clearly when an application for a discretionary activity will be notified
- state clearly when an application will not be notified or limited notified
- if activities not explicitly mentioned by the plan are intended to be discretionary (i.e. they are used as the default activity class), the plan should state this explicitly to remove any confusion or doubt.

[District Plan](#) and [Regional Plan](#) examples are provided.

### Non-complying activities

Non-complying activities are those that the RMA, regulations (including a national environmental standard), or a plan describes as non-complying. This activity status is often reserved for those activities where the potential adverse effects are great but do not necessarily warrant prohibition. An application for a non-complying activity can be declined or granted (with or without conditions). Councils can grant consent where an application can meet any of the following tests:

1. the adverse effects on the environment will be minor (disregarding the adverse effects on those who have given their written permission, and exercising the discretion to disregard adverse effects of the type generated by activities the plan permits or is permitted by a national environmental standard (ss104(2) and 104(3)(a)(ii))
2. the application is not contrary to the objectives and policies of the plan, the proposed plan, or both (as appropriate - s104D(1)(b))
3. the activity can comply with any restrictions, conditions and permissions specified in the Act, regulations or plan (s87A(5)(b)).

The non-complying activity status can be useful for situations where it is intended that consents only be granted in exceptional circumstances (for example in managing cumulative adverse effects on a resource that is at, or close to, capacity). However, using the non-complying activity status in this way requires clear, strong, objectives and policies to be included in plans. Without such clear, strong, objectives and policies, there is a risk that the threshold to meet the second test above (that of s104D(1)(b)) may be set too low, inadvertently allowing consents to be granted where it may not otherwise have been desirable to do so.

In writing non-complying activities it is good practice to:

- state what activities are regarded as non-complying, and where in the district or region the non-complying activity status is to apply



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- clearly state any restrictions, conditions and permissions that need to be complied with for the activity to be a non-complying activity
- state clearly when an application for a non-complying activity will be notified
- state clearly when an application will not be notified or limited notified
- ensure that objectives and policies provide clear, strong, guidance to guide decision-makers on the desired outcome and means to achieve that outcome when considering non-complying consent applications.

[District Plan](#) and [Regional Plan](#) examples are provided.

### **Prohibited activities**

A prohibited activity is one that the RMA, regulations or a plan specifically describe as being prohibited. Prohibited activities must expressly prohibit an activity without exceptions.

A resource consent application cannot be made for a prohibited activity and a consent cannot be granted. The prohibited activity status is the most restrictive of any activity status and therefore must be used with care. The decision to use it should be backed with strong evidence of its necessity, including justification through objectives and policies.

While prohibited status would require a plan change to allow prohibited activities to take place, the plan change process should not be used as an alternative resource consent process.

In writing prohibited activity rules it is good practice to:

- specify what the prohibited activity status is to apply to and where the relevant activities will be prohibited from (do not rely on district or region-wide blanket prohibitions unless there is strong evidence that demonstrates the effects of the activity are unacceptable for the whole region or district)
- ensure that the activity or effect is easily identifiable and discrete (so as to avoid loopholes in interpretation or inadvertently including activities or effects that may otherwise be acceptable)
- consider including a note that no resource consent can be applied for or granted
- ensure that policy provides clear direction that supports and justifies the prohibited status (if not, consider a less restrictive status).

[District Plan](#) and [Regional Plan](#) examples are provided.

### **Rules relating to notification and non-notification**

Section 77D allows plans to include rules that specify when a local authority:

- must publicly notify a resource consent application
- is precluded from publicly notifying a resource consent application
- is precluded from giving limited notification of a resource consent application

Tips for writing notification and non-notification rules follow.



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- Before deciding whether to write a rule requiring notification or precluding notification, consider carefully what the likely effects on affected parties may be. Use the [permitted baseline](#) test. Note that this test also includes the effects of activities permitted by a national environmental standard.
- Be specific as to the circumstances or type of activities where notification will be required.
- Be specific as to the circumstances or type of activities that enable notification or limited notification to be dispensed with.

### Catch-all rules

Sections 68(5) and 76(4)(e) state that a rule may "require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan". This effectively limits the range of activities that can be covered by a catch-all rule.

Check what effects are already managed by the plan against s87B(1)(a). Does the combination of the plan and s87B cover all the effects that may need to be managed? If not, then consider drafting a rule according to s68(5) or s76(4).

## Assessment criteria

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Some RMA plans contain assessment criteria in their rules to guide or direct users towards considering specified environmental effects or issues.

Assessment criteria should not be included in the plan as rules. The statutory framework of the RMA enables provision for such criteria (or matters of assessment) to be included in such a way that the consent authority should have regard to them through their presence in objectives and policies. Assessment criteria can also be expressed as matters over which control or discretion is retained when writing rules for controlled or restricted discretionary activities.

There may also be a role for assessment criteria in full discretionary activities when there is a need to draw attention to particular effects. The wording can make the assessment criteria mandatory (e.g. "...the council **must** be satisfied...") or discretionary (e.g. "...the council **may take into account** whether...") in an application.

### Good practice in using assessment criteria

- Incorporate assessment criteria into policies instead of rules where possible.
- Where assessment criteria are contained in objectives and policies, ensure there is a clear cross-referencing back to them from the rules that implement those objectives and policies.
- Where assessment criteria in controlled or restricted discretionary activities rules are intended to be (or have the effect of) matters over which the council intends to retain control or restrict its discretion, they should be expressed as such.
- Matters of assessment should relate back to effects the activity may have on the environment, or the aspect of non-compliance that has triggered the need for the resource consent.
- Write assessment criteria as 'inclusive ' statements (i.e. "...includes the following...").
- The following phrases can be used at the start of each assessment matter:
  - "The extent to which ..."
  - "The ability to..."
  - "The degree to which..."
  - "Whether the..."

In some cases such criteria would be better incorporated into the objectives and policies of plans, but there may be circumstances (such as when considering full discretionary activities) where the criteria may be of such detail that their incorporation into policy could result in overly long, complex, policies. If assessment criteria are used, care should be taken to ensure that they are directly related to the relevant objectives and policies, and do not provide any additional matters for consideration or leave gaps.

### Cross-referencing

Plans that deal with a multitude of issues and topics (such as district plans, combined planning documents, or regional plans that deal with more than one topic) are of such complexity that cross-referencing is usually necessary to avoid excessive repetition. Cross-referencing can take a number of forms, though summary tables and italicised



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references next to plan provisions (side notes) are increasingly becoming common methods.

When cross-referencing consider:

- making the cross-reference visible either by way of its position on the page or font.
- when making a cross-reference from a rule to another rule, placing the cross reference in the rule itself (e.g. "...and must also comply with standards for noise emissions in rule 2.3.5.5")
- using summary tables to show the linkages between multiple provisions
- making cross-references hyperlinks in on-line (electronic web-based) plans.

Avoid:

- cross-references that are too general ("...refer to chapters 10-12 of this plan for objectives and policies that apply...").

For more information refer to [cross-references in RMA Plans](#).

### Definitions

Definitions are used to give a standard meaning to words or phrases that occur frequently throughout a plan. The use of definitions avoids repetition and promotes consistency in interpretation. As the defined terms are usually part of, and crucial to, policies and rules, the same level of care should be taken in their drafting.

In writing definitions it is good practice to:

- use definitions sparingly and only where needed - ask whether defining the term under consideration is likely to clarify provisions, or just adds complexity
- reflect common understandings or meanings of the defined term as far as practical (refer to the Oxford English Dictionary as a starting point)
- define words that differ in meaning from common understandings or meanings when used in the RMA plan
- use diagrams to illustrate terms that are difficult to describe in words (such as matters with a spatial or geographic component)
- place all definitions in one place (for example a 'definitions' chapter in the plan) unless the definition is only used in one particular rule or clause ("for the purpose of this rule, height means...")
- consider placing terms that are defined outside the plan (such as in legislation) in a glossary located either before or after the definitions chapter of the plan
- arrange definitions in alphabetical order
- check definitions against each other to ensure that there are no gaps or overlaps
- re-check definitions before notification of a plan or plan change or after amendments. Delete definitions of terms that are no longer used, and ensure those that remain are consistent with the latest changes or amendments
- use hyperlinks in electronic plans to take the reader from rules back to definitions where a defined term is used in an objective, policy or rule



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- work towards definitions that are consistent with those of other district and regional plans. This may mean looking at what other plans use (most plans are now on-line) or discussing definitions and experiences with staff from other local authorities.

### Avoid:

- defining terms that have a commonly accepted meaning (e.g. sky) unless such terms are to have their meaning 'restricted' or 'extended' in the plan
- writing definitions in such a way so that they become a de facto rule or contain matters that would be better expressed as a rule (by containing thresholds, standards or terms for example)
- using the words 'means' and 'includes' in the same definition ('means' relates to the complete and total meaning whereas 'includes' is used where the meaning is incomplete or indicative)
- scattering definitions throughout the plan
- repeating or paraphrasing definitions or sections in statutes or regulations (if there is desire to make these available to readers, consider putting them in a glossary that is identified as not forming part of the plan)
- writing definitions in such a way that change the status of activities or that deal with matters that should be dealt with in a rule (readers expect definitions to only relate to matters of interpretation or meaning)
- definitions referring to other defined terms that in turn refer to the former definition (so creating circular arguments).

See [examples of definitions styles](#).



## Methods (other than rules)

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Methods are the means by which policies are implemented. Methods can be regulatory (in the form of rules, designations for example) or non regulatory (e.g. council grants and assistance).

The inclusion of methods (other than rules) in plans is at the discretion of a council (ss67(2) and 75(2)) They are mandatory in regional policy statements (s62(1)(e)). While a rule is still considered to be a method the RMA separates rules from 'other methods' and makes their inclusion in plans mandatory.

Methods (other than rules) could be included in plans when:

- there is a need to highlight significant 'other methods' crucial to the implementation of the policies of the plan to plan users (particularly if rules are coordinated or work more effectively with the 'other methods')
- seeking to ensure the role of other methods in achieving plan objectives and policies is recognised
- a plan intends to give effect to a regional policy statement (in whole or in part) through means other than rules
- there is no other council document external to the plan that may otherwise contain the detail of the methods proposed to be used.

### Good practice in writing methods

In addition to the statutory duties under s32, it is good practice to evaluate other methods that may implement plan objectives and policies in terms of their practicality and cost. A number of key questions can assist in determining the usefulness and workability of a method:

- **Is the method consistent with the policies of the plan?** The method needs to align with, or contribute to achieving the desired outcomes (objectives) of the plan. Care needs to be taken that implementation of the methods will not compromise other methods or become inconsistent with objectives and policies in other parts of the plan. It is also good practice to compare the methods with other plans administered by the council, to ensure they do not conflict or overlap.
- **Is the method affordable?** Consider the costs to both the council and those whom the method will impact on. Is the council committed to funding the method in the long term? What are the costs to landowners, applicants, businesses etc? If the costs of implementing the methods are too high, those implementing or impacted by the method will be unable or unwilling to see it implemented.
- **What are the risks concerning community buy-in or response?** Risks are wider than just whether elected members will support the inclusion of a particular method in the plan or not. It is also important to think about how acceptable the method may be to the wider community and in particular the major players in the community. Little buy-in from the community will make implementing the method difficult and could also result in pressure for the method to be removed from the plan.
- **Is the method realistically achievable?** What is proposed should not be beyond the capability of the council (or other persons that it affects) to



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implement. Achievement of the method should also be measurable so that those implementing or monitoring the plan know whether its use has been successful.

- **Is the method legally robust?** Thought needs to be given as to whether the method is justifiable under law, whether the council has the legal ability to use or enforce use of the method, and how well it aligns with the other legal responsibilities of the council (particularly methods derived from other statutory bases).

Methods in plans should:

- relate to the policies which they are supposed to implement
- be clearly identifiable as a discrete course of action rather than generalised
- be succinct (but not to the extent that they become one- or two-word generalisations)
- measurable (in terms of knowing whether they are being used and whether they are effective)
- be clear as to when the method is to be implemented by persons or organisations other than the local authority who prepared the plan
- be clear where the method is to be used (if not over the whole region or district).

Methods included in documents outside plans should:

- acknowledge the district or regional plan policies that they help implement.

Methods should not:

- be a restatement of the policy it purports to implement
- include the specifics of a rule (e.g. "buildings encroaching above the height plane at 9 metres will be discretionary activities")
- state timeframes that limit the use of the method beyond a certain date unless there is absolute certainty that there will be no opportunity to use that method beyond that time (for example "To acquire land at Pouaho Raki to serve as a reserve to assist in promoting biodiversity by 18 March 2009" could be used if an international treaty makes acquisition of land after 18 March 2009 impossible)

### Regional council examples

#### For an issue related to water quality

- Provide funding and practical assistance for community groups that help improve water quality through cleaning up and replanting riparian margins in the Erehwon Region.
- The Whatsup District Council must require the provision of full-width esplanade reserves as part of all new subdivisions adjoining Lake Turgid, and Brown River.

#### For an issue related to management of coastal biodiversity

- Establish and run a public information programme to increase community understanding of biodiversity issues and ways to avoid damage to the region's coastal ecosystem.



## District Council Examples

### For an issue related to built heritage management

- Provision of free heritage conservation advice on, and information on the benefits of using the *Olde Worlde Heritage Area* design guide to encourage building repair and alterations to be sympathetic with local heritage character.
- Set up and administer a heritage liaison group including community representatives, tangata whenua in Whatsup District and the New Zealand Historic Places Trust to monitor and report on the heritage issues and resources of the district and provide input into resource consent applications with heritage issues.

### For issues related to noise

- Seek legal agreement on a memorandum of understanding between Whatsup Airport Authority and the Airways Corporation to ensure night time ground movements of aircraft comply with residential noise limits by closing taxiway 3 to night-time operations



## Principal reasons and explanations

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The Concise Oxford Dictionary defines a 'reason' as being "a cause, explanation, or justification" or alternatively a "good or obvious cause to do something". 'Explain' means "to make (something) clear by describing it in more detail" or to "give a reason or justification". There is some overlap between the terms 'reason' and 'explain'. Consequently many first-generation RMA plans grouped explanations and reasons together.

The inclusion of principal reasons in the plan is at the discretion of the council but ss67(2)(c) and 75(2)(c) limits them to being "principal reasons for adopting policies and methods".

Sections 67(2)(h) and 75(2)(h) allow a council, at its discretion, to include any other information required for the purpose of the council's functions, power and duties under the RMA.

### Should reasons and explanations be included in plans?

For:

- Reasons and explanations provide additional information to assist understanding of provisions, and how those provisions fit with other plan provisions.
- They assist in making plan provisions transparent (justifications for the presence of certain provisions are able to be provided).
- They assist in explaining the links and relationships between policies, including regulatory and non-regulatory approaches.

Against:

- Reasons and explanations add to plan length without being crucial to the operation of the plan (they have no legal effect).
- They add more material that could be the subject of submissions and appeals (and thereby add cost and time to the plan development process).
- Similar material can be incorporated into external documents such as s32 reports and guides to the plan.
- Extensive explanations can confuse rather than assist the plan reader through using different words or suggesting a meaning that does not match that of the ordinary meaning of the words in the provision that it seeks to explain.
- They may not adequately explain all of the details and reasoning behind policies without adding considerably to plan bulk.

### Practice in writing reasons and explanations

#### Reasons

When preparing reasons it is good practice to:

- keep the style of reasons consistent throughout the plan



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- (if the reasons for one provision are exactly the same as those for another provision) use the same wording in those explanations and reasons, or combine the reasons if located close together.
- write reasons from the perspective of:
  - how objectives manage the environmental issues of the region or district and the purpose of the RMA (i.e. achieve sustainable management and avoid, remedy or mitigate effects)
  - how policies and methods meet the objectives of the plan, manage effects, or the intent of the RMA
- keep reasons relatively short (more detail can be contained in the s32 report if necessary)
- ensure there is a logical sequence between reasons (no non-sequiturs).

### Explanations

When preparing explanations it is good practice to:

- use explanations for rules only where necessary (draft rules so the meaning can be derived from the ordinary meaning of the words in the rule itself; explanations are then not necessary)
- ask:
  - Do the provisions need explanation or is the meaning self-evident?
  - Does the proposed explanation add to the understanding of the provision (or its context) or hinder it? (Testing the proposed wording with another person who has consent processing experience could assist in this.)
- keep the style of explanations consistent throughout the plan
- (if the explanations for one provision are exactly the same as those for another provision) use the same wording in those explanations and reasons or cross-reference to a 'common explanation'
- use diagrams to support explanations where provisions have a geographical or spatial element that is difficult to describe.

Explanations should not:

- contain material that should be in the provisions they seek to explain nor repeat verbatim content of the provisions they seek to explain
- paraphrase or attempt to reword the provisions they explain in a way that may give rise to a different interpretation of those provisions.

### Examples (District Plan)

Principal reasons: Policies 5.5.1 to 5.5.4

The instability of slopes in the Waipopo hill country means that excavation and infilling associated with establishing building platforms and roads can contribute to slips, increased erosion or subsidence. Restrictions on the location of building sites are the most effective means to avoid adverse effects in this area but engineering solutions that meet the intent of objective 5.5 may also assist.

Principal reason: Rule 6.7.8.9

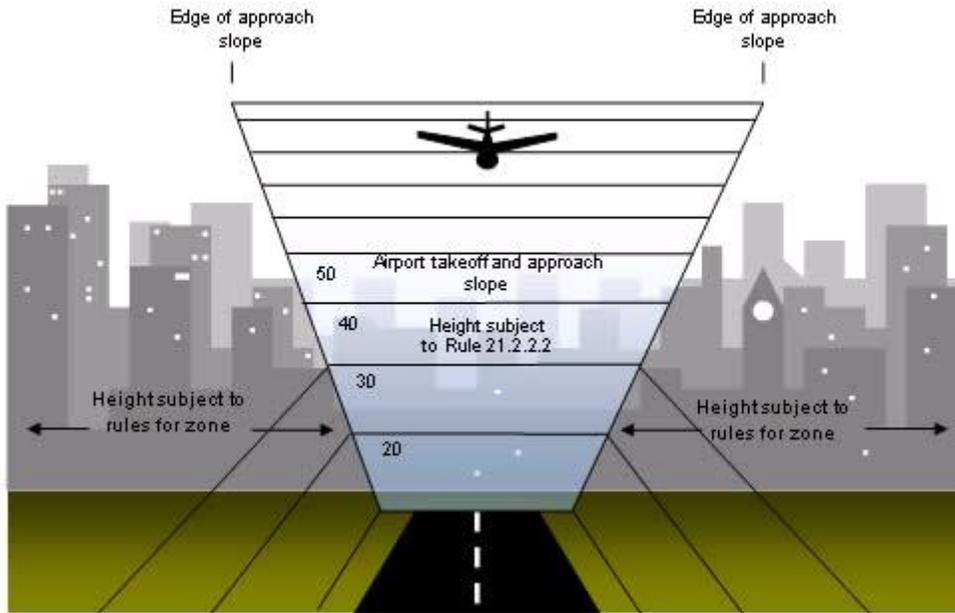
The protection of historic heritage is a matter of national importance under section 6(f) of the Resource Management Act 1991. Modification of historic sites and buildings to allow other uses can destroy the heritage values of those sites and buildings. The resource consent process allows effects to be assessed and managed.

Explanation: Rule 7.8.9.1

Large numbers of big signs can adversely affect the visual appearance of heritage areas. This rule sets standards managing the number, height and area of signs on buildings or fences in the Watane Heritage Area with the consents processed used to evaluate individual standards exceeding the standards. Signage on footpaths in the Watane Heritage Area is managed through the Whatsup District Council Sign By-law (1997).

Explanation: Rule 21.2.2.2

Rule 21.2.2.2 is designed to provide for the safety of aircraft flying in and out of Whatamata Airport by providing a corridor of airspace in line with the ends of the runway that is free of obstacles. The rule prescribes a sloping maximum height plane (Shown to scale in map G6) that overrides any less stringent maximum building or structure height rules contained in this plan. Outside the sloping height plane, the height limits particular to the zone apply.



### Examples (Regional Plan)

Principal reasons: Policies 5.5.1 to 5.5.4

**Policies 5.5.1 to 5.5.4** manage the discharge of contaminants into air (see objective 5.5) by focussing on the origin of discharges and their location. It is difficult to control or mitigate the scale and distribution of effects of airborne contaminants once they are released so management is primarily focussed around avoiding emissions of



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contaminants at their source. As it is not possible to avoid the discharge of contaminants in every case, policies 5.5.3 and 5.5.4 provide guidance on the type and degree of mitigation that may be considered where avoidance is unwarranted or impractical.

Principal reason: Rule 6.7.8.9

**Policy 6.6.7** of the Erehwon Regional Policy Statement requires that plans recognise and provide for sea level rise as an effect of climate change. The best current estimates of possible sea level rise indicate a rise of 0.2 metres by 2030 and 0.66 metres by 2100. The figure of 0.5 is used in the policies and rules of this plan as an estimate of the sea level rise within the average lifetime of structures being built in the Erehwon coastal environment.

Explanation: Policy 10.8.9.

The soil and water bodies of the Waipopo hill country are close to their assimilative capacity. **Policy 10.8.9** and associated rules **10.8.9.1 to 10.8.9.5** limit further, cumulative wastewater and effluent discharges to avoid that assimilative capacity being exceeded. Rules in the Whatsup District Plan complement policy 10.8.9 by requiring all dwellings built on residential or rural residential zoned to have access to, and be connected to, a reticulated sewerage system.

Explanation: Rule 10.5.5.5

The aerial application of fertilisers is a commonly used management technique and may be the only practical means of distributing fertilisers effectively in some areas. Provided that the specified criteria are met, effects will be minimal. Applicators accredited by the Agricultural Education Trust are required to comply with the Agricultural User's Code of Practice which places additional safety restrictions on this type of application.



## Writing environmental results expected

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Environmental results expected (EREs) are the results or outcomes expected from the combined effect of objectives, policies, rules and other methods contained in policy statements or plans.

EREs provide an indication to the plan reader about the likely outcomes of the provisions contained in the plan. They link directly to plan monitoring and provide indicators to measure the effectiveness and success of the plan.

The inclusion of EREs in plans is at the discretion of a council (ss67(2) and 75(2)) They are mandatory in regional policy statements (s62(1)(g)).

EREs could be included in plans:

- when a combined planning document is prepared
- when there is a desire to highlight or emphasise to plan users the likely outcomes of the plan provisions and not all likely outcomes can be recognised through reading the objectives
- where an ERE represents a staged outcome on the way to achieving the longer-term objective (i.e. the objective is not achievable within the life of the plan)
- to provide a clear link from the plan to the s35 plan effectiveness monitoring report

### Good practice in drafting EREs

EREs should:

- be linked to the provisions of the plan, and in particular the objectives
- be **measurable**: there should be an ability to establish whether or not the result has been achieved or the expected change has occurred
- focus on what is expected or observed over the life of the plan or policy statement provisions to which the ERE relates
- also relate those outcomes that are incidental to the primary objective or that may occur as a side effect of implementing the policies, rules and other methods. Note that these outcomes could be positive or negative.

An ERE should not:

- repeat the objectives of the plan (but they should be able to demonstrate what should happen if the objective is achieved)
- focus on administrative or process outcomes (e.g. "resource consents are able to be processed faster")
- be vague or express generalised expectations (e.g. "minimisation of the cumulative effects of discharges to air").



### District plan examples

- The maintenance or enhancement of the distinctive landscape character of the Whatsup District rural zone as measured by density of dwellings, average lot size, retention of identified landmarks and the area of vegetation (see objective 9.3).
- There is no accidental contamination of, or damage to, sites adjoining newly established hazardous facilities located in the Commercial B Zone (see objective 7.5).
- New reserves of at least 20 metres in width are provided along areas of coast to act as a buffer against erosion and to maintain or enhance public access when land adjoining the coast is subdivided (see objective 10.3).

### Regional plan examples

- There is no increase in residual contaminant levels on privately owned land in the Erehwon Region. (refer to objective 3.3).
- There is no net loss in the area of indigenous forest on Class VIe and VIIe and VIII privately-owned land in the Waipopo hill country (refer to objective 7.2).
- The structural integrity of Papakowhai plain aquifers is maintained and there is no significant continuing long-term decline in mean annual groundwater levels (see objective 8.7)



## Planning maps

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The maps associated with regional or district plans will, along with rules and definitions, be amongst the most commonly referred to parts of the plan. As with rule text, accuracy in what maps portray and how they portray it is very important - they indicate where certain plan provisions will apply and in some cases actually form part of a plan rule.

Planning maps should:

- clearly show section and lot boundaries for properties (all lot boundaries shown and at a scale where they are easily distinguishable from neighbouring lots)
- provide information that assists in the location of individual properties or features, (key land marks, rivers and streams, road names, key street numbers or similar)
- show detail without being overly cluttered (for example, patterns can be effective, but become distracting if every zone uses them and additional information is then overlaid)
- use aerial photographs to provide additional information relating to certain sites (ecological areas or areas prone to coastal erosion for example)
- have a fold-out key that can remain visible when maps are opened
- have 'key maps' (small maps or diagrams that show how the map being viewed relates to surrounding maps or which part of the region or district is covered, or both)
- have 'index maps' that indicate which maps cover which parts of the district or region.

Other features that are particularly useful are:

- having an electronic index map that hyperlinks to the appropriate planning map for on-line plans
- 'mouse-overs' (the ability to query selected features by running the mouse point over them, which brings up a small text box explaining what the feature of the object is). Some plans also have a variation of this - hyperlinks back to the text sections of the plan (to, for example, to schedules of significant trees or designations)
- the ability to move to adjacent maps by clicking on arrows rather than having to close the map and open another.

## Map colours

There are no regulations or specific standards that stipulate that colour has to be used on planning maps, or what colours are to be used. Nevertheless it is important to the practical considerations of using colour:

- colour maps cost more to produce and reproduce
- subtle shades such as pastels do not contrast well on black-and-white photocopiers or printers
- up to 14% of the New Zealand population suffers some degree of colour blindness (either red-green or blue-yellow). Subtle shades and tones can cause difficulties for these readers.



To assist in making maps accessible to readers:

- select colours with care, avoiding use of pastel shades of red and green (or blue and yellow) in circumstances where many small areas of these colours would otherwise adjoin each other
- consider using supplementary labelling or patterns for zones or management areas; this can assist those with colour blindness or overcome some limitations of photocopiers or printers.

### Map content

The content of planning maps will vary according to their purpose and the existence (or otherwise) of supplementary maps that may provide more detailed information. In addition to the map features listed in the introduction, planning maps should also show:

- unique map identification number for citing in rules etc (e.g. Map B16)
- an indication as to when the map was last drawn (so plan readers can check if their copy is the most up-to-date version)
- north direction
- scales (numeric ratio and ruler format, noting that standardising on a few scales across all maps is preferable to each map having a different scale)
- clearly defined cadastre
- regional and district boundaries (with the name of the neighbouring local authority as appropriate)
- planning information for which the map was prepared (zoning, designations, policy area boundaries, hazard areas, significant sites and the like)
- an indication as to where more detailed maps can be found (if used).

In addition it is common for map sets to have an index of roads and key features at the back of the map set that lists the name of the road and features alphabetically and the relevant map number and position on the map (such as by way of coordinates). For example:

Feature	Map	Coordinates
Grinch Grove	3	C4
Grumpy Road	4	B7
Grunge River	7	D9
Mount Miserly	2	B3, B4
Poverty Park	1	A3
Wretched River	5	D3
Woeful Wetlands	1	C9

Or:

Bling Boulevard	Map A1	Centre
Dough Drive	Map B9	West
Moni Stream	Map A1	NE
Rollinginit Road	Map A3	SW
Splurge Avenue	Map C7	NW
Treasure Terrace	Map C8	SW

## Map scale

Map scales will vary according to the level of detail that needs to be shown on maps but may also be dictated by the base data used to produce the maps.

Where local authorities have the ability to choose their maps scales, a common key determinant of what scale to use will be lot or section size and the type of information that is to be shown on the smallest lot or section. If a small section has some form of boundary running through it (an edge of a hazard area or riparian margin setback for example) the scale should be sufficient to indicate clearly where that boundary lies. Generally, larger-scale maps can be used in rural areas, while smaller-scale maps should be used for urban areas or other situations where there is fine detail. Based on an evaluation of planning maps around New Zealand, and the detail shown on them, the following scales or ranges are suggested:

### District plans

- index maps: A scale that allows the whole district or city to be shown on one map (in the range 1:50,000 to 1: 500,000 for example)
- rural areas, or other areas of predominantly large lot or section sizes: 1:10,000 to 1:25,000 (noting that supplementary diagrams or maps can be used if a small area needs to be shown in more detail)
- urban areas: 1:5,000 to 1:10,000
- roading hierarchies (an overview map of sufficient scale to show the whole city or district, and possible smaller-scale supplementary maps, such as 1:10,000, for areas where the roading hierarchy shown is more dense)
- hazard maps, and policy areas: 1:1,500 to 1:5,000 (it is also useful to show the actual dimensions of these areas on the map itself)
- fine-detail maps (for example those for inner city designations) 1:1,500 to 1:5,000 (it is also useful to show the actual dimensions of features such as designations on the map itself).

### Regional plans

- index maps: A scale that allows the whole region to be shown on one map (in the range 1:100,000, to 1:1,500,000 dependent on the size of the region for example)
- maps pertaining to resources in urban areas: 1:20,000
- maps pertaining to resources in rural areas: 1:25,000 to 1:200,000 depending on the type and size of resource being mapped
- hazard maps around urban areas: 1:5,000
- significant sites, or maps showing greater detail: 1:5,000 to 1:25,000
- coastal maps (away from urban areas) 1:50,000 to 1:250,000
- coastal maps (adjacent to urban areas) 1:50,000 to 1:100,000
- coastal maps (around port facilities) 1:5,000 to 1:10,000.

## Map sheet size

As with map colours, there is no mandatory map size. Most planning maps have standardised on A3-sized sheets of paper, but a number of plans use A4 paper instead. Very few plans now use maps sheets larger than A3.

A3 maps:

- are the largest size that many common photocopiers /printers can cope with
- can be accommodated on most office desks when open
- allow for helpful features such as key maps to be incorporated on each page without greatly reducing the area of the principal map
- provide better contextual information than A4 maps by being able to show larger areas of the district or region on one map.

A4 maps:

- are more compact than A3 maps so they can be accommodated more readily on a bookshelf or in a briefcase
- are the same size as the paper used for the text for most plans so can be attached or integrated into the text document if desired
- fit virtually all photocopiers, printers, computer scanners, and fax machines.
- their size limits the ability to incorporate user-friendly features such as key-maps on the same page as the principal map.

Planning maps on-line

Maps can be presented on-line in a variety of formats including portable document format (pdf), html, or xml. It is suggested that maps be in php, jpg, or gif formats or embedded into html format where possible and incorporate features such as:

- a legend, identified and remaining visible on each individual map
- map scales that remain visible and automatically adjust when zooming in and out
- street names and feature names remain legible or can be zoomed in on
- individual maps able to be identified by clicking on an 'index' or 'master' map
- icons and symbols on the planning maps hyperlink to relevant plan schedules or tables
- printer-friendly options
- an electronic index that hyperlinks to features and places on the map or similar search function.



## External documents and appendices

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### External documents

The types of external documents that can be incorporated into a plan via reference are set out in clause 30(1) of schedule 1 of the RMA and include:

- a) standards, requirements, or recommended practices of international or national organisations; or
- b) standards, requirements, or recommended practices prescribed in any country or jurisdiction; or
- c) any other written material that deals with relevant technical matters.

External documents can be incorporated into plans and proposed plans in one of two ways:

1. copying the relevant text (and diagrams, if applicable) from the external document and incorporating the key concepts (or words) from that document into the plan when the plan is being reviewed or going through a plan change
2. incorporating the document (in whole or in part) through a reference to it at the time the plan is being reviewed or going through a plan change.

The first way is useful when there is only a small section of the document that is relevant to the plan (a definition for example) and those drafting the plan want to exclude the remainder. The second way (for example reference to an entire standard or methodology), may be useful when the whole document (or a substantial part of it) is relevant to the plan but is too large to be practicably incorporated into the text or would interrupt the flow of the plan.

As material incorporated by reference in a plan or proposed plan has legal effect as part of the plan, the same degree of care should be taken in regard to its consideration as any other plan provision.

Part 3 to schedule 1 sets out the legal grounds for, and requirements surrounding, the incorporation of external documents into plans via reference. Important aspects of part 3 of schedule 1 are:

- the local authority is expected to retain a copy of material incorporated by reference that is certified as being correct
- a local authority must make copies of the material to be incorporated by reference available (including for purchase) at its offices before it notifies a proposed plan, plan change or variation that includes that material
- the local authority must give public notice under clause 34(2)(c) of the availability of the externally referenced material before it notifies a proposed plan, plan change or variation.
- a local authority must, before notifying a proposed plan, plan change or variation incorporating material by reference, allow persons a reasonable opportunity to comment on that material and consider any comments made



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- expired or revoked material continues to have effect as part of the plan unless a variation that has merged to become part of the plan, or a plan change approved under part 1 of schedule 1, states the material ceases to have effect.

In addition to the above aspects, when referencing external documents in plans it is also good practice to:

- identify the document in a clear and precise manner. The full name of the document should be cited along with its date of publication or version number (for example: NZS 6808:1998 Acoustics - The Assessment and Measurement of Sound from Wind Turbine Generators)
- before referencing an external document in its entirety in a rule, check the content to ensure that it does not inadvertently import provisions that are ultra vires, or provide the council with discretion where none is appropriate (this is particularly important when rules relate to permitted activity requirements, conditions, or permissions).

Avoid:

- the use of words such as "or any replacement standard" or "or any subsequent corresponding successor" after the reference to the document. Clause 31 of schedule 1 requires that there has to be a variation or plan change for an amendment to an externally referenced document to have effect through the plan.

### Appendices

An appendix is additional, subsidiary, material added at the end of a book or document. Some plans refer to an appendix as an 'annex' or 'schedule'. Appendices in RMA plans are typically used for containing technical, explanatory or other supplementary information that supports plan provisions (but is too large or cumbersome to include within the main text of the plan without distracting from the flow of objectives, policies or rules).

Examples of material often contained plan appendices include:

- large diagrams or tables referenced in more than one policy or rule
- protocols, or requirements that support plan rules (such as liaison protocols in support of a rule requiring a noise management plan to be produced)
- memoranda of understanding relevant to the implementation of the plan
- design guides
- lists or schedules of sites (such as designations, or sites with high heritage or biodiversity values).

When including appendices in plans is it good practice to:

- place appendices at the back of the plan and keep them together. This follows normal publishing conventions, ensuring readers are easily able to predict where to find such information
- ensure appendices are included in the table of contents at the start of the plan (include the appendix number and name in the same way you would list information for a plan chapter)



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- number appendices consecutively. For clarity, the New Zealand Legislation Style Guide (1996) suggests the use of Arabic numerals (for example, Appendix 1, Appendix 2) rather than roman numerals or words
- use a similar numbering system within appendices to that used for plan provisions (for ease of reference), particularly if a plan provision uses the content of an appendix for requirements, conditions, permissions, or matters of assessment
- check that the material included in the appendix does not convey a discretion to the consent authority where no discretion is appropriate (particularly if an appendix contains material critical to a plan rule that determines the status of an activity or making a decision on a resource consent)
- if an appendix relates to a discrete plan provision, consider a reference back to that plan provision under the appendix heading, for example:

Appendix 5

Stock Truck Effluent Disposal Sites (see rule 14.5.5.4)

Avoid:

- writing provisions in appendices that act as stand-alone rules or policies. An appendix is subsidiary to the provisions of the plan and should not be a substitute for provisions in the main text of the plan. An appendix may support or be part of a plan provision, such as a rule, by being referred to in that provision but may cause confusion if used as a plan provision in its own right
- including material that is not essential to the implementation of the plan (international environmental charters that are not otherwise included into the plan through specific provisions for example).



## National Policy Statement and National Environmental Standards

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National policy statements (NPSs) and national environmental standards (NESs) differ in how they influence the wording of plan provisions. NPSs have the purpose of stating objectives and policies for matters of national significance, while NESs prescribe technical standards, methods or requirements.

Under s43A, an NES may:

- allow an activity (including by way of making it a permitted activity that may or may not be subject to conditions (which could include compliance with plan rules))
- allow a resource consent application to be made for an activity and can specify the activity status of that activity
- prohibit an activity
- restrict the making of a rule or granting of a resource consent to the matters specified in the NES
- specify the circumstances where an application for a resource consent must be notified or where notification or limited notification is precluded
- require a certificate of compliance to be obtained
- require local authorities to review permits under s128(1) as soon as practicable or within a timeframe specified in the NES.

### Including NPSs and NESs in plans

Sections 55(2A) to (2D) set out the process for changing plans to give effect to an NPS.

A council must amend its plan or policy statement to include specific objectives and policies or to give effect to specific objectives and policies if an NPS so directs. Where a direction is made under s55(2), councils must directly insert any objectives and policies without using the schedule 1 process, but must publicly notify the changes within five working days of making them. Any further changes required must be done through the schedule 1 process (such as changing rules to give effect).

Where there has been no direction under s55(2), councils must amend their plans or policy statements to give effect to the NPS using the schedule 1 process. The amendments must be made as soon as practicable, unless the NPS specifies a timeframe.

Section 44A sets out the process for changing plans to give effect to NESs. An NES takes immediate effect and may be absolute, effectively overriding affected rules of a plan. Local authorities cannot have plan rules that are more lenient than the NES (s44A(2)(b)), and may only include more stringent controls through rules if the NES provides for this (s44A(2)(a)). Any rules that duplicate or conflict with the provisions of a NES must be removed from a plan. This must be done as soon as practicable after the NES comes into effect without using the Schedule 1 process.

A council must enforce the observance of NESs to the extent to which their powers enable them to do so.



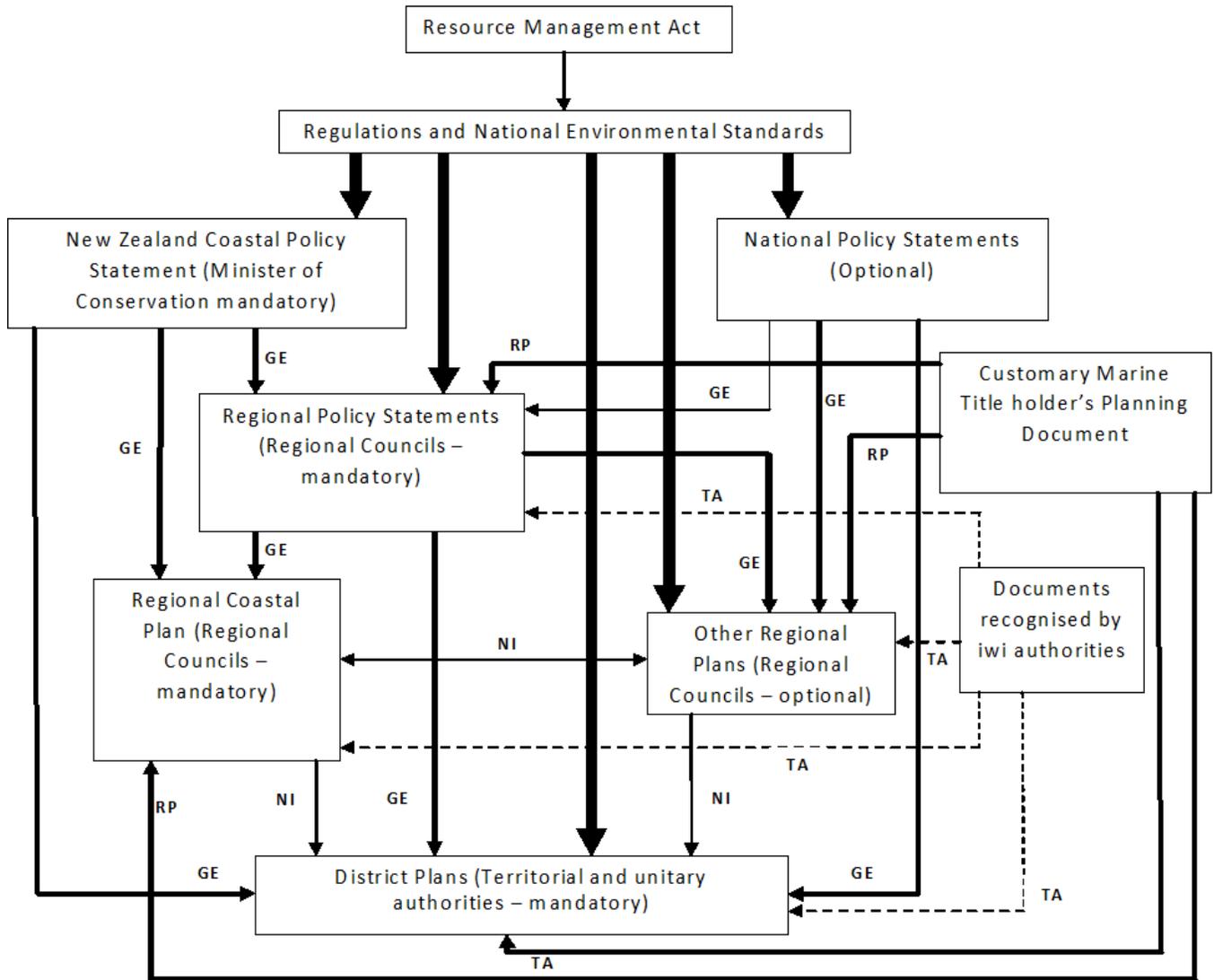
**THE RMA QUALITY PLANNING RESOURCE**

It is good practice to:

- check any new NPS or NES for the presence of provisions specifying dates by which a local authority is required to amend its policy statements or plans
- check NPSs for the presence of directives under s55(2) that provide for objectives and policies of an NPS to be directly inserted into a plan without using schedule 1
- keep copies of all NESs and NPSs and ensure the NESs and NPSs are available for viewing alongside the regional or district plan
- remember to check by-laws to see if they need amending in light of the introduction of any new NES and NPS
- record in any decision on resource consent applications that a relevant NPS or NES was considered.

**Linkages between key documents, strategies and statutory acknowledgements**

**Linkages between key RMA documents**



In the diagram, the thickness of the line corresponds to the legal weighting accorded the relationship between documents. Abbreviations:

- GE = Must give effect to
- NI = Must not be inconsistent with
- RP = Must recognise and provide for
- TA = Must take into account

A description of the relationships is as follows:

### Regional plans:

- must give effect to the New Zealand Coastal Policy Statement (ss7 and 8 of the Hauraki Gulf Marine Park Act 2000 are also deemed to be a New Zealand Coastal Policy Statement under s10 of that Act)
- must give effect to any national policy statement and national environmental standard
- must give effect to the regional policy statement
- must not be inconsistent with any water conservation order
- must not be inconsistent with any other regional plan for the region
- a rule in a plan cannot be more lenient than a national environmental standard
- a rule in a plan cannot be more stringent than a national environmental standard unless specifically allowed by that standard.

When preparing or changing a regional plan the regional council:

- must recognise and provide for any customary marine title group planning document lodged with the council to the extent that its content has a bearing on the resource management issues of the region and to the extent the plan or plan change relates to the customary marine title area.
- take into account any customary marine title group planning document lodged with the council to the extent that its content has a bearing on the resource management issues of the region and to the extent the plan or plan change relates to a part of the common marine and coastal area outside the customary marine title area.
- must take into account any relevant planning document recognised by an iwi authority, and lodged with the council, to the extent that its content has a bearing on the resource management issues of the region
- have regard to any proposed regional policy statement in respect of the region
- have regard to the Crown 's interests in the coastal marine area
- have regard to any management plans and strategies prepared under other Acts to the extent that their content has a bearing on the resource management issues of the region
- have regard to any relevant entry in the Historic Places Register to the extent that their content has a bearing on the resource management issues of the region
- have regard to any regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources to the extent that their content has a bearing on the resource management issues of the region
- have regard to the extent to which the Regional Plan needs to be consistent with the regional policy statements and plans, or proposed regional policy statements and proposed plans of adjacent regional councils.
- have regard to the extent to which the regional policy statement needs to be consistent with regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

### **District plans:**

- must give effect to the New Zealand Coastal Policy Statement
- must give effect to any national policy statement
- must give effect to the regional policy statement
- must not be inconsistent with a water conservation order
- must not be inconsistent with a regional plan
- a rule in a plan cannot be more lenient than a national environmental standard
- a rule in a plan can prevail over a national environmental standard if the rule is more stringent and the standard expressly allows a rule to be more stringent than the standard

When preparing or changing a district plan the territorial authority:

- must have regard to any proposed regional policy statement in respect of the region; or proposed regional plan of its region in respect of any matter of regional significance
- must have regard to any management plans and strategies prepared under other Acts
- must have regard to relevant entries in the Historic Places Register to the extent that their content has a bearing on the resource management issues of the region
- must have regard to regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources to the extent that their content has a bearing on the resource management issues of the region
- must have regard to the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.
- must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that their content has a bearing on the resource management issues of the district
- must not have regard to trade competition

Note that those drafting and changing district plans should also consider how national environmental standards impact on plan provisions. Rules that conflict with or duplicate a national environmental standard must be removed, generally as soon as practicable after the standard comes into effect. The schedule 1 process is not required to be followed when making these changes.

### **Key linkages with selected non-RMA plans and strategies**

Sections 61(2)(a)(i), 66(2)(c)(i) and 74(2)(b)(i) of the RMA require councils to have regard to management plans and strategies prepared under other acts to the extent that their content has a bearing on resource management issues of the district/region, when preparing or changing a regional policy statement, regional plan and district plan. Below is a list of some key management plans and strategies prepared under other acts:



- **Land Transport Management Act 2003**
  - Regional Land Transport Plans
  - Regional Public Transport Plans
- **Local Government Act 2002**
  - Growth strategies (optional)
  - Long Term Plan
  - Annual Plan
  - Reserve Management Plans
- **Conservation Act 1987**
  - Conservation Management Strategy (DOC)
  - Conservation Management Plan
- **Biosecurity Act 1993**
  - Regional Pest Management Strategies
- **Reserves Act 1977**
  - Reserve Management Plans

More detail on the relationship and purpose of documents that influence RMA plans is provided in the text below.

### **Long Term Plans**

Under the Local Government Act 2002, local authorities are required to develop a Long Term Plan.

Prepared by each local authority, Long Term Plans are ten-year strategic planning documents that cover all local authority functions from financial planning and economic development initiatives, to social service provisions such as libraries, housing and community facilities. Long Term Plans must be reviewed every three years.

The Long Term Plan does not override the provisions of RMA plans (or other statutory documents), nor is there a legal requirement that any new plans must conform to a Long Term Plan that is in force. It is anticipated that local authorities will use the Long Term Plan process to inform and coordinate RMA plans and other plans and strategies. Consultation that has been carried out as part of the Long Term Plan process within the previous 36 months can also be used to inform RMA plan preparation.

RMA plans can be used as a means to achieve environmental outcomes under the Long Term Plan. This could either be done directly through the alignment of objectives, policies and rules, or coordinated regionally through a regional policy statement. Conversely, the Long Term Plan can be used as a means of coordinating methods other than rules for RMA plans (where they are aligned). Of particular note should be the policy on the development of contributions and financial contributions and financial strategies contained in Long Term Plans, which provide direction to a local authority Annual Plan (among other things it sets out funding for particular services, programmes and capital works for the financial year, and the two years following).



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Note that ss61(2)(a)(i), 66(2)(c)(i), and 74(2)(b)(i) of the RMA require that regional policy statements, and regional and district plans have regard to management plans and strategies prepared under other Acts.

It is worth noting also the weighting that proposed plans, plan variations, or plan changes may have by virtue of their relationship with a Long Term Plan.

### **Annual Plans**

Annual Plans are developed under s95 of the Local Government Act 2002. As part of their purpose they:

- contain the proposed annual budget and funding impact statement for the year to which the annual plan relates
- support the Long Term Plan in providing integrated decision-making and coordination of the resources of the local authority
- extend opportunities for participation by the public in decision-making processes.

As all local authority work programmes are funded by, or have implications associated with operational or capital expenditure, linkages with Annual Plans (either directly or via the funding strategy in the Long Term Plan) become important during the years between reviews of Long Term Plans when considering:

- the funding and resourcing of the plan development process
- the funding of programmes to implement methods other than rules in RMA plans (for example animal pest eradication in some catchments to assist in maintaining biodiversity or water quality)
- infrastructure (for example when planning new urban growth areas, RMA plan provisions should align with the ability to fund infrastructure necessary to avoid, remedy, or mitigate effects).

### **Government Policy Statement on Land Transport Funding**

The Government Policy Statement on Land Transport Funding (GPS) is the main guiding document by which the government prioritises expenditure from the National Land Transport Fund over a 10-year period.

This GPS is issued by the Minister of Transport at least once every six years. It details the government's desired outcomes and funding priorities for the use of the National Land Transport Fund to support activities in the land transport sector. It contains the Crown's Land Transport Investment Strategy, which is reviewed at least once every three years. The GPS covers the impacts the government wishes to achieve from its investment in land transport, how it will achieve these impacts through funding certain activity classes, how much funding will be provided, and how this funding will be raised.

The GPS is developed and issued under the Land Transport Management Act 2003, which is the main statute for New Zealand's land transport planning and funding system. Regional councils, city/district councils, the New Zealand Transport Agency (NZTA), and

other approved organisations under that Act can receive money from the National Land Transport Fund for the land transport activities they deliver, such as the construction and maintenance of state highways, local roads and public transport services.

### **National Land Transport Programme**

The NZTA 's National Land Transport Programme gives effect to the GPS. It contains all the land transport activities, such as public transport services and infrastructure and road construction and maintenance, that are expected to receive funding for the next three years.

### **Regional Land Transport Plan**

Regional Councils are responsible for the preparation and review of Regional Land Transport Plans (and Auckland Transport on behalf of Auckland Council). A Regional Land Transport Plan is to be issued every six years and reviewed every three years.

A Regional Land Transport Plan must set out the region's land transport objectives, policies, and measures for at least 10 financial years. It must contribute to the purpose of the Land Transport Management Act 2003 and be consistent with the GPS.

A Regional Land Transport Plan can inform district plan development by:

- identifying the potential impact of changing patterns and trends in land use planning. This is required to predict land transport requirements in the future
- ensuring that subdivision and development is appropriately sited to support and make the best use of existing transport systems
- making appropriate provision for alternative modes of travel other than by car.

Note that sections 61(2)(a)(i), 66(2)(c)(i), and 74(2)(b)(i) of the RMA require that regional policy statements, and regional and district plans have regard to management plans and strategies prepared under other Acts.

### **Regional Pest Management Strategies**

The Biosecurity Act 1993 sets the framework for the management of plant and animal pests. Regional and unitary authorities may prepare regional strategies that cover pest management over a period of five years or more. Strategies must be reviewed at least once every five years.

Each regional pest management strategy will normally:

- specify the level of intervention required to manage one or more pest species (from monitoring to total eradication) through various objectives
- detail the means by which council will meet the objectives.

Sections 61(2)(a)(i), 66(2)(c)(i), and 74(2)(b)(i) of the RMA require that regional policy statements, and regional and district plans have regard to management plans and strategies prepared under other Acts.



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While many regional pest management strategies pre-date Long Term Plans, they can be used to assist regional and unitary councils in addressing community outcomes (especially those relating to environmental and economic wellbeing).

The objectives contained in regional pest management strategies and the ways in which they are met may overlap or assist the objectives in RMA plans (such as objectives and policies relating to maintaining indigenous biodiversity). In this regard pest management strategies can be used as a method (other than a rule) for implementing RMA objectives and policies.

Conversely, RMA policy statements and plans can assist in increasing the effectiveness of pest management.

### **Reserve Management Plans**

Reserve management plans are required under the Reserve Act 1977, while some residual requirements with respect to regional parks also survive in sections in the Local Government Act 1974.

Reserve management plans are required to "provide for and ensure the use, enjoyment, maintenance, protection, and preservation, as the case may require, and, to the extent that the administering body 's resources permit, the development, as appropriate, of the reserve for the purposes for which it is classified". They are also required to incorporate and ensure compliance with the principles relating to the management and purpose of the type of reserve to which they apply.

Under the Reserves Act 1977, reserves are designated one or more of seven types:

- recreation reserves
- historic reserves
- natural reserves
- scenic reserves
- scientific reserves
- government-purpose reserves (usually for a set stated purpose but can be used to protect areas with important wildlife, scenic, historical, archaeological or scientific values provided they are compatible with the primary purpose of the reserve)
- local purposes reserves (for set stated purpose but can be used to protect areas with important wildlife, scenic, historical, archaeological or scientific values provided they are compatible with the primary purpose of the reserve).

Access and use of reserves may be controlled through bylaws, licenses, permits, covenants and other similar means as appropriate to the type to reserve.

Reserves and reserve management plans can be used as a methods (other than a rule in a plan) to meet the objectives and policies of RMA plans although they may not have been developed for that purpose. For example, a historic reserve classification under the Reserves Act could be used to assist in the management of a historic site under council control in place of some RMA plan controls.



## THE RMA QUALITY PLANNING RESOURCE

Note that sections 61(2)(a)(i), 66(2)(c)(i), and 74(2)(b)(i) of the RMA require that regional policy statements, and regional and district plans have regard to management plans and strategies prepared under other Acts.

### **Growth strategies and plans**

Growth strategies and their respective plans are not required under legislation but are increasingly being used by local authorities as a means to coordinate the land use planning, infrastructural, and financial needs associated with urban growth.

Implementation of growth strategies will of necessity be through several plans simultaneously. The Long Term Plan could be used to set the broad framework required to coordinate social, environmental, economic and cultural aspects of managing the growth. The financial strategy in the Long Term Plan could then be used to guide annual plans that set the year-by-year funding for infrastructure. Objectives in the Long Term Plan could also provide an input into objectives and policies in RLTSs, reserve management plans, regional policy statements, regional plans, and district plans that would implement the growth strategy.

A regional policy statement can coordinate and direct the plans of both the regional council and territorial authorities in the region so as to provide for consistent and integrated outcomes (for example in regard to land use and key infrastructure) when implementing a growth strategy. Alternatively, a growth strategy may be implemented at a sub-regional level through a combination of RMA plan provisions (for example land use), reserve management plan provisions (if new reserves are required or changes need to be made to the management of existing reserves) and annual plan programmes (for infrastructure and services, for example).

### **Civil Defence and Emergency Management Plans**

Civil Defence and Emergency Management plans (CDEM plans) are prepared under the Civil Defence and Emergency Management Act 2002 for each CDEM group. While these plans cover matters associated with emergency response and recovery, they can also cover material associated with hazard risk reduction (such as avoidance of hazard-prone land, making provision for infrastructure that mitigates flooding risk or planning evacuation routes). In this way that can inform and provide an input into RMA plans either directly, or through a regional policy statement (in which case regional and district plans may have to give effect to any policy or method in the RPS that may have been derived from a CDEM plan).

Note that sections 61(2)(a)(i), 66(2)(c)(i), and 74(2)(b)(i) of the RMA require that regional policy statements, and regional and district plans, have regard to management plans and strategies prepared under other Acts.



## Conservation Management Strategies and Plans

Conservation management strategies are prepared by the Department of the Conservation under ss17D and 17F of the Conservation Act 1987. Conservation management strategies are the primary method of implementing general policies produced by the Director-General of Conservation and of establishing objectives for the integrated management of natural and historic resources, including any species, managed by the Department of Conservation under the:

- Wildlife Act 1953
- Marine Reserves Act 1971
- Reserves Act 1977
- Wild Animal Control Act 1977
- Marine Mammals Protection Act 1978
- National Parks Act 1980
- New Zealand Walkways Act 1990
- Hauraki Gulf Marine Park Act 2000.

Conservation management plans are prepared under s17E of the Conservation Act 1987 (but can also be prepared under other Acts such as the Reserves Act 1977). The purpose of a conservation management plan is to implement conservation management strategies and establish detailed objectives for the integrated management of natural and historic resources within any area for recreation, tourism, and other conservation purposes.

In a manner similar to reserve management plans, conservation management plans can have regulatory effect through bylaws (such as those relating to access).

Sections 61(2)(a)(i), 66(2)(c)(i), and 74(2)(b)(i) of the RMA require that regional policy statements, and regional and district plans have regard to management plans and strategies prepared under other Acts.

Conservation management strategies and conservation management plans can provide useful information for RMA plans through identifying or recording:

- the 'priority areas' (such as certain identified wetlands, remnant forest, historic reserves and the like) where the Department of Conservation intends to focus its resources and the values attached to those priority areas
- conservation management issues and options - some of which may overlap with, or help inform, RMA plan issues
- Department of Conservation actions and implementation programmes - some of which may overlap or complement RMA methods (other than rules).



## **Incorporating statutory acknowledgements into second generation RMA plans**

Statutory acknowledgements are statements in Treaty of Waitangi settlements between Crown and iwi that are intended to recognise the mana of tangata whenua groups in relation to identified sites and areas.

Statutory acknowledgements are an acknowledgement by the Crown of the particular cultural, spiritual, historic, and traditional association of an iwi with each statutory site and area.

Text for statutory acknowledgements is included in the schedules to each relevant Claims Settlement Act. The locations for statutory acknowledgement areas are shown on Survey Office (SO) plans. While these plans do not indicate the precise boundaries of the statutory acknowledgement area, they do indicate the location as nearly as possible.

Statutory acknowledgements are only over Crown land and may apply to land, rivers, lakes, wetlands, a landscape feature, or a particular part of the coastal marine area. Where a statutory acknowledgement relates to a river, lake, wetland or coastal area, it only applies to that part of the bed in Crown ownership or control.

There are also some settlement negotiations underway where a final settlement has not been yet reached, but statutory acknowledgements are already in effect through agreements in principle.

Schedule 11 to the RMA includes a [list of Treaty settlements that include statutory acknowledgements](#).

### **RMA implications**

Decision-making in relation to statutory acknowledgement areas is subject to the provisions of Part II of the RMA.

While statutory acknowledgements may vary for each claimant group, a statutory acknowledgement will generally require local authorities to:

- forward summaries of all relevant resource consent applications to the relevant claimant group governance entity - and provides the governance entity with the opportunity to waive their right to receive summaries
- have regard to a statutory acknowledgement in forming an opinion as to whether the relevant claimant group may be adversely affected in relation to resource consent applications concerning the relevant statutory area
- attach, for public information, a record of all statutory acknowledgement areas wholly or partly within the district or region to all regional policy statements, district plans, and regional plans within the claimant area.

None of the above requirements override or limit councils existing obligations under the RMA.



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Statutory acknowledgements can also be used in submissions to consent authorities, the Environment Court and the Historic Places Trust, as evidence of a specific claimant group's association with a statutory area.

### **Good practice ideas for plan preparation**

While the only legal requirements with regard to statutory acknowledgements in the preparation of plans and policy statements is to attach them to the relevant planning document, they provide a clear statement of the interests of tangata whenua that can be used to inform plan preparation.

For example, statutory acknowledgements could be used to:

- create a starting point for consultation
- assist in drafting plan provisions
- identify activities/circumstances in which the iwi authority may consider waiving its right to receive summaries of applications; for example where particular activities are not considered to affect the associations identified in the SA
- using controlled, restricted discretionary and discretionary activity status where activities are likely to result in adverse effects on particular sites or issues of concern identified in the statutory acknowledgement, which can include the requirement to obtain written approval from the claimant group.
- identify areas of importance to an iwi, or where consultation with iwi is to be encouraged through their incorporation into planning maps, or alert layers within GIS.



## Checklists for RMA plan writers

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### **Please read this box before using the checklists**

This checklist has been developed to assist RMA plan writers in writing effective and enforceable plan provisions. However, while meeting all criteria assists in good practice, **it does not guarantee that provisions will be safe from legal challenge** (particularly on matters of merit).

While this checklist is designed to assist those preparing plans, **it does not replace the need for clear, logical thinking and careful analysis of issues and solutions.** In some cases it may not be possible to meet all the criteria, and careful thought will need to be given as to how the proposed provision can be drafted to still achieve the outcome desired in a consistent manner.

### **Introduction**

This checklist is divided into the following sections:

- issues (not mandatory)
- objectives and policies (mandatory)
- plan rules - by activity class or type (mandatory)
- definitions, and notification rules (mandatory)
- methods, principal reasons, explanations, environmental results expected (not mandatory)
- planning maps.

The first decision for plan drafters to make is what components they will include in their plans. The first checklist acts as a reminder to establish this before provisions are drafted.



**Framework elements to be included in the Plan**

Objectives, policies, and rules are mandatory. Tick the other boxes of the other policy framework to be included in the plan.

Issues [Optional]	
Objectives	
Policies	
Rules	
Methods Other Than Rules [Optional]	
Explanations [Optional]	
Principal Reasons [Optional]	
Environmental Results Expected [Optional]	
Cross Boundary Issues [Optional]	

Where the optional boxes are not ticked above, indicate below where the information not contained in the plan will be found. Some documents can contain a range of possible provisions (shown in brackets).

Section 32 Report (in regard to issues, methods, explanations or reasons)	
Section 35(2A) Monitoring Report (issues, environmental results anticipated, methods)	
Long Term Plan (methods)	
Annual Plan (methods)	
Council Activity Plans (methods)	
Reserve Management Plans (methods)	
Guide to the plan (issues, methods, explanations, reasons)	



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Design guides	
Heritage inventories or strategies	
Others?	

**Issues (Not mandatory)**

**Identification of Issues**

Ticking all boxes is not mandatory but reflects good practice.

The issue is specific to the region or district (as applicable)	
The issue has been evaluated to be significant enough to require management	
The cause of the issue has been identified (not just the symptoms)	
The council is responsible for managing the issue (in whole or in part)	
The issue is not already managed by another authority or organisation	
The issue can be addressed by the council through the RMA	
The plan is the best option for managing the issue	

**Writing issues**

The issue is not restating provisions of the RMA but applies the RMA locally	
The issue identifies the cause of the problem (or the source of the opportunity)	
It is clear <b>where</b> in the region or district the issue is of concern (or applies)	
The issue identifies <b>what</b> is being affected and <b>how</b> (i.e. the environmental effect)	
If the issue is intermittent, the time or circumstances of occurrence are identified	
The issue is not covering internal council matters (such as a lack of information)	
The issue does not state the desired outcome or solution	
The issue is written succinctly and in 'plain English'	



**Objectives and policies (mandatory)**

**Objectives**

The objective has been identified as the most appropriate way to achieve the purpose of the RMA	
The objective clearly relates to an issue (if stated in the plan) by subject matter	
The objective does not relate to an issue outside the scope of the RMA	
The objective aims to overcome an issue or promote a positive outcome	
The objective states <b>what</b> is to be achieved and <b>where</b>	
The objective is worded in such a way that the outcome is measurable	
The objective does not just restate the issue	
The objective does not pre-empt policy (stating how the objective is to be met)	
The objective does not set requirements, conditions or permissions that should be in rules	
The objective does not just repeat sections or clauses of the RMA	
The objective is written succinctly and in 'plain English'	

**Writing policies**

The policy relates to, and implements, an objective	
Cross-references (if used) to the objectives it implements are clear	
The policy is not a restatement of the objective	
The policy describes <b>how</b> the objective(s) will be met	
It is clear <b>where</b> in the region (or district) the policy will apply	



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It is clear <b>who</b> is expected to comply with the policy or implement it	
The policy relates to environmental effects that need to be addressed	
'Matters of assessment' are explicit in the policy rather than contained as criteria in rules	
Clauses, sub-clauses, and lists are clearly numbered (no bullet points)	
The policy does not change the type or class of consent required for an activity	
The policy provides clear guidance to consent processing staff in a way that allows it to be consistently applied (check with consent staff)	
The policy is written succinctly and in 'plain English'	

### Plan rules (Mandatory)

#### Rule necessity

Ticking all boxes is not mandatory but reflects good practice.

The rule will help the council carry out its functions under the RMA	
The rule is necessary to achieve, and clearly relates to, the policies and objectives of the plan	
The rule manages one or more environmental effects	

#### Permitted activity rules

Ticking all boxes is not mandatory but reflects good practice.

Rules are written from the standpoint of explicitly managing an activity (in regard to land uses) through compliance with requirements, conditions and permissions	
Rules are written from the standpoint of expressly permitting an activity (in regard to subdivision, using the coastal marine area, using beds of lakes or rivers, taking, damming or diverting water, or discharging contaminants)	
It is made clear that activities are permitted, provided they meet requirements, conditions and permissions	
It is clear <b>what</b> activities are permitted and <b>where</b> they are permitted	
The impact of the 'permitted baseline' has been considered	
The rule will not permit an activity that will, or is likely to, have a significant adverse effect on a protected customary right	
The rule will not permit an aquaculture activity in the coastal marine area in a regional coastal plan	
The following words or phrases (which convey discretion) <b>are avoided</b> in requirements, conditions and permissions:	
<ul style="list-style-type: none"> <li>reasonable</li> </ul>	



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<ul style="list-style-type: none"><li>• appropriate</li></ul>	
<ul style="list-style-type: none"><li>• approximate</li></ul>	
<ul style="list-style-type: none"><li>• inappropriate</li></ul>	
<ul style="list-style-type: none"><li>• should</li></ul>	
<ul style="list-style-type: none"><li>• significant</li></ul>	
<ul style="list-style-type: none"><li>• might</li></ul>	
<ul style="list-style-type: none"><li>• existing</li></ul>	
<ul style="list-style-type: none"><li>• 'at the discretion of '</li></ul>	
<ul style="list-style-type: none"><li>• 'to the satisfaction of '</li></ul>	
<ul style="list-style-type: none"><li>• 'avoid, remedy or mitigate'</li></ul>	
<ul style="list-style-type: none"><li>• 'as it sees fit'</li></ul>	
<ul style="list-style-type: none"><li>• 'where practicable'</li></ul>	
<ul style="list-style-type: none"><li>• 'best practicable option'</li></ul>	
<ul style="list-style-type: none"><li>• 'and/or'</li></ul>	
Words and phrases used in this rule (if used elsewhere in the plan) are consistent and defined words are used where appropriate	
Diagrams associated with the rule text are clearly linked to or referenced, and able to be understood	
The requirements, conditions and permissions to be complied with are clearly identified and not ambiguous in their wording	
The requirements, conditions and permissions are identified and measurable	



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Activity status is not dependent on the approval of a third party	
Activity status is not dependent on a discretion exercised by the council	
The rule does not make a permitted activity subject to fulfilment of 'consent-type' conditions (financial contributions for example)	
Rules have been checked (by consent staff, legal review, or both)	
The rule is written succinctly and in 'plain English'	

**Controlled activity rules**

It is clear <b>what</b> (or under which circumstances) activities are controlled	
It is clear <b>where</b> in the region or district this activity status applies	
The standards and terms that need to be complied with are clearly identified and not ambiguous in their wording	
Activity status is not dependent on the approval of a third party	
Requirements, conditions and permissions are related to environmental effects	
It is possible and practical to manage the environment effects through conditions on the consent (remembering the consent can 't be declined)	
The matters over which council reserves control are clearly identified	
The matters over which council reserves control are limited in scope to the effects of most concern	
Matters over which control is retained are not so narrow as to create a 'de facto permitted activity'	
'Matters of assessment' are included in policies and not the rule	
There is a clear link (such as a cross-reference) to the relevant guiding policies	



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The rule is written succinctly and in 'plain English'	
Is a notification or non-notification clause required?	

**Restricted discretionary activity rules**

It is clear <b>what</b> (or under which circumstances) activities are 'restricted discretionary'	
It is clear <b>where</b> in the region or district this activity status applies	
The requirements, conditions and permissions (if any) that need to be complied with are clearly identified and not ambiguous in their wording	
Activity status is not dependent on the approval of a third party	
The matters over which the council has retained discretion are clearly identified	
Consideration has been given to positive environmental effects and RMA part 2 matters	
Matters of discretion are not so wide as to, in effect, make activities 'discretionary'	
'Matters of assessment' are included in the policy the rule is implementing	
Is a notification or non-notification clause needed?	
There is a clear link (such as a cross-reference) to guiding policies	
The rule is written succinctly and in 'plain English'	

**Discretionary activity rules**

It is clear <b>what</b> (or under which circumstances) activities are 'discretionary'	
Activity status is not dependent on the approval of a third party	
It is clear <b>where</b> in the region or district discretionary activity status applies	
The requirements, conditions and permissions (if any) that need to be complied with are clearly identified and not ambiguous in their wording	



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'Matters of assessment' are included in policies whenever possible rather than as criteria in the rule	
There is a clear link (such as a cross-reference) back to guiding policies	
Is a notification or non-notification clause needed?	
The rule is written succinctly and in 'plain English'	

**Non-complying activity rules**

It is clear <b>what</b> (or under which circumstances) activities are 'non-complying'	
It is clear <b>where</b> in the region or district non-complying activity status applies	
Activity status is not dependent on the approval of a third party	
There is a clear link (such as a cross reference) back to guiding policies	
Is a notification or non-notification clause needed?	
The rule is written succinctly and in 'plain English'	

**Prohibited activity rules**

It is clear as to <b>what</b> (or under which circumstances) activities are 'prohibited'	
It is clear as to <b>where</b> in the region or district prohibited activity status applies	
The rule prohibits the activity or effect absolutely (no exceptions)	
Policy that supports prohibited activity status is present in the plan and linked to from the rule	
The rule includes a statement that "no resource consent can be granted"	
The rule is written succinctly and in 'plain English'	
The prohibited activity status is only used when the activity in question cannot be	



contemplated in any circumstances, and should be justified in objectives and policies
---

**Definitions and notification rules**

**Definitions**

The definition is justified in terms of clarifying plan provisions
The definition reflects common understanding of the term or word used
The definition is not a commonly understood word (e.g. sky, water, hill)
The definition does not change, repeat or paraphrase one already in legislation
Diagrams are used to support concepts difficult to describe in words
The definition does not inadvertently set activity status
The definition is not expressed in a way that provides an element of discretion
All definitions are located in the same section of the plan (except for those rules-based definitions that differ from the principal meaning)
Definitions are expressed in a way similar to ordinary (non-specialist) English dictionary definitions
Definitions are arranged in alphabetical order in the plan
Cross-references to, from and between definitions are clear and unambiguous

**Rules for notification, limited notification and non-notification**

The plan clearly states when an application must be publicly notified and a national environmental standard does not preclude public notification of the application.
The plan clearly states when an application must not be notified or limited notified and a national environmental standard does not preclude public notification of the application.



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Phrasing of rules relating to notification, limited notification and non-notification is consistent throughout the plan
Notification rules are written succinctly and in 'plain English'

**Methods, principal reasons, explanations, and environmental results expected (Not mandatory)**

**Methods (Other than rules)**

The method is aligned and consistent with the policies of the plan
The method can be adequately resourced during the lifetime of the plan and is committed to by the local authority
The method chosen complies with the law (including legislation outside the RMA)
The method has been evaluated as being effective in achieving results
The method is written as a discrete course of action
The method is succinct without being abbreviated to the point of being meaningless
The method does not restate the policy it helps implement
The method does not state material that should be in rules
The method does not state timeframes that may suggest it may be invalid beyond a certain date unless that is what is intended
The method is measurable (it is evident when it has been implemented)
The method acknowledges the plan provisions they implement
The method is written succinctly and in 'plain English'

**Principal reasons**

The style of writing adopted is consistent throughout the plan	
The same wording is used when the reasons are the same	
Reasons for objectives describe how they manage issues or meet the purpose of the RMA without paraphrasing the Act	
Reasons for policies describe how policies meet objectives in the plan	
Reasons do not repeat other plan provisions (issues, objectives, policies, or rules)	
Reasons do not contain statements or material that should be in policies or rules	
Reasons are written succinctly and in 'plain English'	
Reasons are not worded in such a way that they provide a different interpretation to the ordinary meaning of the words in other plan provisions	

**Explanations**

The provision being explained cannot be written in a way that makes its meaning self-evident	
The explanation is necessary to the interpretation of the plan	
The style of the explanation is consistent with that of other explanations in the plan	
The explanation does not contain material that should be in the plan provision	
The explanation does not paraphrase or reword the provisions in a way that may lead to a different interpretation	
The explanation does not introduce new material that conflicts with the provision it seeks to explain	
The explanation is written succinctly and in 'plain English'	



**Environmental results expected (EREs)**

The EREs are linked to the provisions of the plan (particularly the objectives)
The EREs are measurable (you are able to know when it has been achieved)
The EREs measure results that will occur during the lifetime of the plan
The EREs acknowledge results that may occur, but are incidental to the primary objectives of the plan (such as positive or negative side effects)
The EREs do more than just repeat the objectives in the plan
The EREs do not focus on administrative or process outcomes
Each EREs is expressed as a meaningful sentence
The EREs are written succinctly and in 'plain English'

**Planning maps**

An index map is provided where there is more than one planning map in the map set
Maps contain a clearly visible north point
Map scales are expressed as a ratio (and in a ruler format if practicable, and an appropriate, but different scale if the maps is reproduced larger or smaller)
Each map has a distinct identification number or name that can be found easily and referenced as necessary
Presentation of key planning information is uncluttered and not likely to cause confusion (check if boundaries can be clearly seen, colours, and text is readable)
Supplementary maps are used to convey information that is of a scale that would not be clear on the main map, or would otherwise clutter the main planning map(s)
Colours and shadings are clearly able to be differentiated when photocopied (consider patterns to support shading or colours if practicable)



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Key maps or diagrams are provided to illustrate the relationship between maps	
Aerial photos or contour maps align with cadastral base or clearly state when the relationship with that base is an approximation	
Key landmarks or reference points are referred to where possible.	



## Further information and examples

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This section provides further information and examples on:

- [To give effect to](#)
- [The permitted baseline](#)
- [Possible plan numbering system](#)
- [Cascade approaches](#)
- [Ideas for providing certainty in plan rules](#)
- [Cross-references in RMA plans](#)
- [Ideas for the use of plain English in plans](#)
- [Promoting internal consistency in RMA plans](#)
- [Testing issues for RMA plans](#)
- [Zoning as a tool in plans](#)
- [The planning process cycle under the RMA](#)
- [Example issues](#)
- [Example plan issues, objectives and policies](#)
- [Example District Plan rules](#)
- [Example Regional Plan rules](#)
- [Examples of definition styles](#)

### '..Give effect to...' a discussion

Sections 67(3) and 75(3) require that plans 'must give effect to' national and regional policy statements.

This requirement for plans to 'give effect' to regional policy statements is designed to give regional policy statements more influence over local policy. It is important that local policy reflects the priorities of the region and is proactive in helping support the integrated management of natural and physical resources of the whole region. Similarly, the requirement to give effect to national policy statements ensures a nationally consistent approach on relevant issues.

Sections 67 and 75 essentially codify case law that said district plans needed to give effect to (or implement) regional policy statements if those policy statements were framed in a directive way.

### A possible meaning of 'give effect to'

The RMA does not provide any direct guidance as to meaning or requirements of what 'give effect to' is intended to mean and there is an absence of case law to test the exact meaning. However, the following discussion offers thoughts and suggestions based on reports and similar wording contained in law and case law.

The words 'give effect to' are intended to convey that plans should actively implement the regional policy statement (the policies, the methods, or both, as applicable)



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In determining if a plan that is being prepared 'gives effect to' a regional policy statement, check to include:

- a) what parts of the national or regional policy statement have direct relevance to the plan (are there similarities in topics covered, issues, or objectives and policies that relate to the same area that is covered by the plan?)
- b) whether the national or regional policy statement contains specific sections, formatting or wording that shows the objectives, policies, or methods that must be given effect to through the plan
- c) to see if the national or regional policy statement expresses objectives and policies in a way that suggests that their implementation is mandatory (for instance using words like 'shall' , 'all councils must')
- d) if the plan being prepared reflects the mandatory provisions contained in the national or regional policy statement (through expressing the same or similar wording or intent in objectives, policies or both)
- e) if the plan being prepared contains rules, or provides a recognisable framework for other methods that implement the objectives and policies of the regional policy statement.

### **Possible implications of 'give effect to'**

- a) National policy statements need to contain clear wording which identifies the specific objectives and policies that are to be included in plans.
- b) Provisions in the regional policy statement that are to be given effect to, need to be worded in a substantially more directive manner than in the first generation of regional policy statements. For example:

"District Plans will include provisions for the setting aside of esplanade reserves or esplanade strips for the purposes of protecting the water quality and biodiversity of the Wharemata River".

- c) Combined planning documents must identify what the objectives, policies and methods of the regional policy statement are, and clearly distinguish these from provisions of a regional or district plan.
- d) Where combined planning documents are not developed, regional councils and territorial authorities will need to work more closely in the development of the regional policy statement to ensure that district plans give effect to the regional policy statement. The process and mechanism to enable this are set out in clause 3A, schedule 1 of the RMA. The same can be said of involvement in the preparation of national policy statements.
- e) Those preparing and writing plans will need to carefully check and be prepared to incorporate issues, and possibly objectives and policies, from the national or regional policy statement.
- f) Section 32 reports will need to identify whether or not the national or regional policy statement have been given effect to in the plan and how. Where parts of the national or regional policy statement that are relevant to the plan are not given effect to, the s32 report will need to set out the reasons why not.

## The permitted baseline in plans

The permitted baseline is a concept designed to disregard effects on the environment that are permitted by a plan or have been consented to. The three categories of activity that needed to be considered as part of the permitted baseline are:

1. What lawfully exists on the site at present
2. Activities (being non-fanciful activities) which could be conducted on the site as of right; i.e. without having to obtain a resource consent.
3. Activities which could be carried out under a granted, but as yet unexercised, resource consent.

Existing use rights are not part of the permitted baseline as they are not permitted by the Plan however they may be important in assessing the receiving environment.

In its codified form, the permitted baseline test is most explicitly applied during the resource consent process when decisions are being made as to whether a consent application needs to be notified (i.e. deciding whether the effects are more than minor and who is affected), decisions on consents (s104), and in some enforcement matters.

The RMA refers to the permitted baseline specifically in three situations relevant to plan development:

1. Section 104(2) states: "When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect."
2. Section 95D(b) provides that a consent authority when deciding if adverse effects will be minor "may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect."
3. The consent authority may disregard an adverse effect of the activity on the person if a rule or national environmental standard permits an activity with that effect (s95E(2)).

The use of the word 'may' in these sections conveys an element of discretion and it is therefore up to the decision-maker as to whether the permitted baseline test is used when assessing effects and identifying affected parties.

### Consideration of the permitted baseline when writing plan provisions

The incorporation of the permitted baseline into plans should not have a noticeable effect on the way provisions look or are worded, although some of the requirements, conditions and permissions used may change. The greater effect is likely to be on the thought processes that go into writing rules for permitted activities and, to a lesser extent, other classes of activity (where these contain thresholds that distinguish between permitted activities and the relevant consent class). It will be important that plan writers not only have a clear understanding of the environment as it exists now, but also the environmental outcomes the plan is aiming to promote.



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The following considerations may be useful for reflecting the permitted baseline in plan rules:

### **Permitted activities:**

- Consider what the character of the existing environment or resource is and ask, "what is the maximum level of change to that character that should be permissible as of right?"
- In preparing or reviewing a set of rules, consider what the maximum permissible development or use will be, should all requirements, conditions and permissions in the plan (or proposed plan) provisions applicable to that area be taken to their limit on all (or most) sites. Such consideration should, however, take into account what may be realistic rather than fanciful. Ask:
  - Are the effects resulting from development or use to the maximum limited permitted acceptable?
  - Would the development or use permitted be consistent with the objectives and policies of the plan?
- Check to see if there are unimplemented resource consents for the site or area to which the permitted activity requirements, conditions and permissions will relate. How might these change 'the existing environment ' and the effectiveness of the provisions proposed? For example if consent has already been granted to develop resources more intensively than seen in the environment as it exist now, then the likelihood of the consent being implemented and the changed character of the environment - as it will exist - may need to be taken into account. However it will not always be practicable to undertake such a wide assessment when drafting rules.

### **Controlled activities**

While the permitted baseline is intended to consider what is permitted 'as of right' by a plan, care may be needed drafting rules for controlled activities. It may be worthwhile to consider:

- the relationship of the controlled activity provisions being drafted with permitted activities. Are the requirements, conditions and permissions being used to define what qualifies as a controlled activity effectively defining the upper limits or thresholds for permitted activities? If they are, are the effects of development at those thresholds acceptable enough to be permitted? If the effects are unacceptable, consider revising the thresholds that qualify an activity for controlled activity status or imposing 'maximum ' limits for permitted activity requirements, conditions and permissions.



**Possible plan numbering system**

The following numbering system borrows from both conventional legislative drafting styles and the numbering system used in some New Zealand planning documents. Because plans may be divided up into parts and chapters and then issues, objectives, policies and rules, and the linkages between the latter need to be clearly shown, the 'multiple decimal point' style is adopted (the main point of difference from the numbering system used in legislation). This example is used for an issue-based plan that cascades from issues, to objectives, policies and then rules. Note that other plan formats cluster rules stemming from several issues, objectives or policies together in separate chapters.

<b>Plan part or position in provision hierarchy</b>	<b>Numbering style</b>	<b>Example</b>
Parts of the plan	Capital Roman numerals I, II, III, IV etc.	<b>Part I:</b> Plan purpose <b>Part II:</b> Definitions
Chapters	Standard numbering prefixed by 'Chapter'  1, 2, 3	<b>Chapter 6:</b> Subdivision issues <b>Chapter 7:</b> Transportation issues
Issues	Standard numbering prefixed by 'Issue'  1, 2, 3	<b>Issue 1:</b> Unmanaged wash-down of effluent from dairy sheds in XYZ can adversely affect the water quality in ABC river.
Objectives	Standard numbering to two levels. For clarification the prefix 'Objective' can be added  1.1, 1.2, 1.3	<b>Objective 1.2:</b> There is no point source discharge of dairy shed effluent from drains in XYZ into the ABC River.
Policies	Standard numbering to three levels  1.1.1, 1.1.2, 1.1.3	<b>1.1.1:</b> Dairy shed effluent in XYZ should be disposed of via...
Rules	Standard numbering to four levels  2.3.3.4, 2.3.3.5, 2.3.3.6	<b>2.3.3.4</b> The maximum height of any building or structure in the XXX zone shall not exceed...



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Subsection or part of policy or rule (note these can also be used for lists provided such lists are not within a subsection or part).	Letters in brackets following alphabetical sequence :  (a), (b), (c)	<b>2.3.5.1</b> Temporary activities are controlled in the CCC zone provided: <b>(a)</b> No single event or ...
Lists within policy (or rule) subsections or parts	Lower-case Roman numerals in brackets  (i), (ii), (iii)	(d) A landscape plan is submitted that shall show: <b>(i)</b> the location and extent of ...

**Some other tips relating to numbering**

- Use the same style and hierarchy throughout the plan.
- If part of a policy or rule consists of two related lists, continue the second list as though it were a continuation of the first (that way there is no danger of the list items being confused through having two similar items). For example:

"Primary Productions includes:

- a) cultivation of land
  - b) keeping and maintenance of animals, birds for the production of fibre, meat or other animal products
  - c) fish and shellfish farming and hatcheries
  - d) fruit, vegetable, flower, seed or grain growing but does not include:
  - e) mining or drilling
  - f) quarrying
  - g) sand mining and shingle extraction".
- Consider breaking lengthy rules up into several separate rules if there are multiple lists and sub lists within the same rule.
  - When referring to other provisions or parts of provisions use the short form of the number in italics (i.e. 2.3.1.6(a)(ii) ) rather than spelling it out in full (rule 2.3.1.6 paragraph (a) subparagraph (ii) ).
  - Don 't use bullet points or dashes in policies and rules as these are confusing and difficult to reference.
  - carefully the range of matters over which the council is to retain control and how much discretion is allowed for. Is the range of control so narrow and the outcome so certain that the provisions are, in effect, a permitted activity?

## Cascade approaches

Cascade approaches are a way of organising plan provisions so that:

- it is easy to check relations between issues, objectives, policies and rules, and to see if they are consistent with each other
- plan drafters and those implementing the plan can check rules to manage the effects of activities through assigning activity status without leaving gaps or overlaps that create uncertainty or unintended outcomes.

### **Cascades for checking internal relationships and consistency**

A cascade approach can be used to check the internal consistency of provisions within plans. Characteristics of a cascade approach:

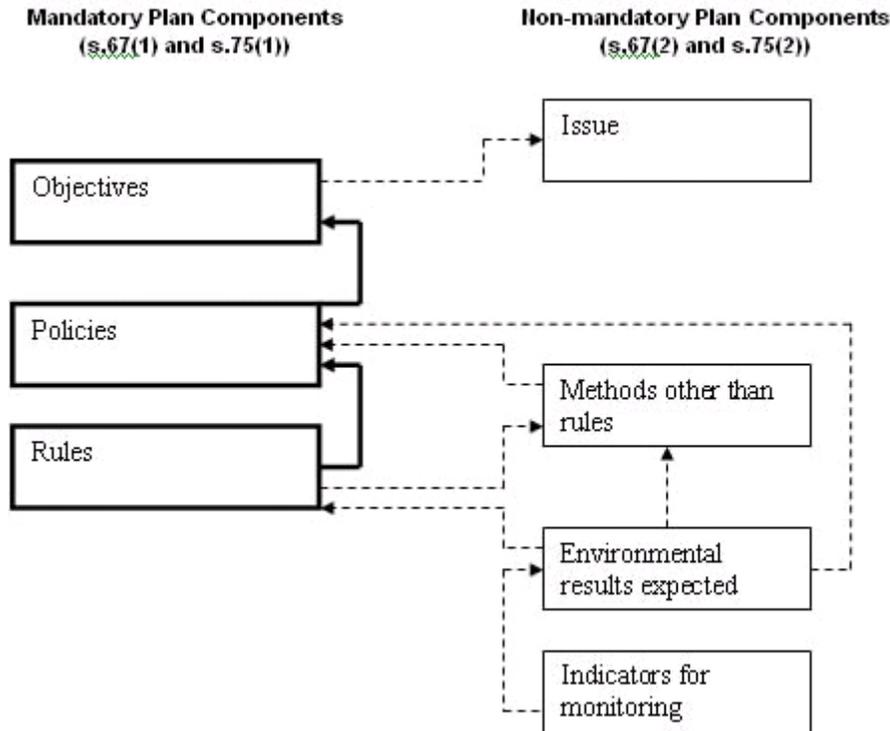
- objectives link back to issues
- policies link back to objectives
- methods link back to policies
- environmental results expected link to objectives
- indicators link to environmental results expected
- rules link to policies and methods.

This cascade approach simultaneously demonstrates both the 'top-down' approach to plan drafting and 'bottom-up' approach to plan interpretation, thereby indicating the close links the levels of plan components have with each other.

Relationships between plan provisions:

- objectives should be related to an issue (the issue may or may not be stated in the plan)
- policies should link to objectives (policies are the course of action to achieve one or more objectives)
- methods should link to policies (they are the techniques for implementing the policies) noting that methods (other than rules) may or may not be stated in the plan
- rules should link to policies (rules should also take into account other methods and may link to those methods)
- environmental results expected should link back to policies and methods (as they will provide a means of testing whether the policies and methods have achieved the desired outcome or objective) noting that environmental results expected may or may not be contained in a plan (if not, they may form part of the plan effectiveness monitoring required under s35)
- indicators should link to environmental results expected (indicators can be prescribed by regulations under the RMA to monitor the state of the environment - s35(2)(a)(ii)).

A cascade approach illustrating the mandatory and non-mandatory components of a plan could take the following form:



**Cascades in plan rules**

In relation to rules, a cascade approach is often used as a means to allocate an activity class to an activity according to the severity of effects (known or possible), or indicate the consequences of non-compliance with any requirements, conditions, or permissions associated with a particular activity class.

In allocating activity status according to severity of adverse effects, a cascade approach can act as a sieve whereby activities with the least potential for significant adverse effects are classified as permitted activities. Activities with some potential to cause a range of known, but relatively moderate, adverse effect may be classified as controlled or restricted discretionary activities. Activities with greater potential to cause more severe adverse effects are typically classified as discretionary, non-complying, or prohibited activities (according to the acceptability of the effect, the degree to which it can be remedied or mitigated, or whether the plan envisages activities with those effects). This allocation of activity status will often be demonstrated through:

- i. explicitly listing activities under a particular activity status
- ii. incorporation of 'qualifying' requirements, conditions, or permissions with which the effects of an activity must comply for the activity to be allocated that activity status
- iii. a combination of (i) and (ii) above.



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In managing the consequences of non-compliance with a requirement, condition, or permission, a cascade approach is also used to decide what activity class the activity will consequently be considered under. For example an activity that fails to meet the requirements, conditions or permissions necessary to qualify for permitted activity status is allocated another activity status (controlled, restricted discretionary, or discretionary) by virtue of its non-compliance. This approach is commonly seen in wording in plan rules such as:

"**12.3.3.5** Activities that do not meet the requirements set out in rule 12.3.3.4 will be considered as a discretionary activity under rule 14.5.5.5."

Or:

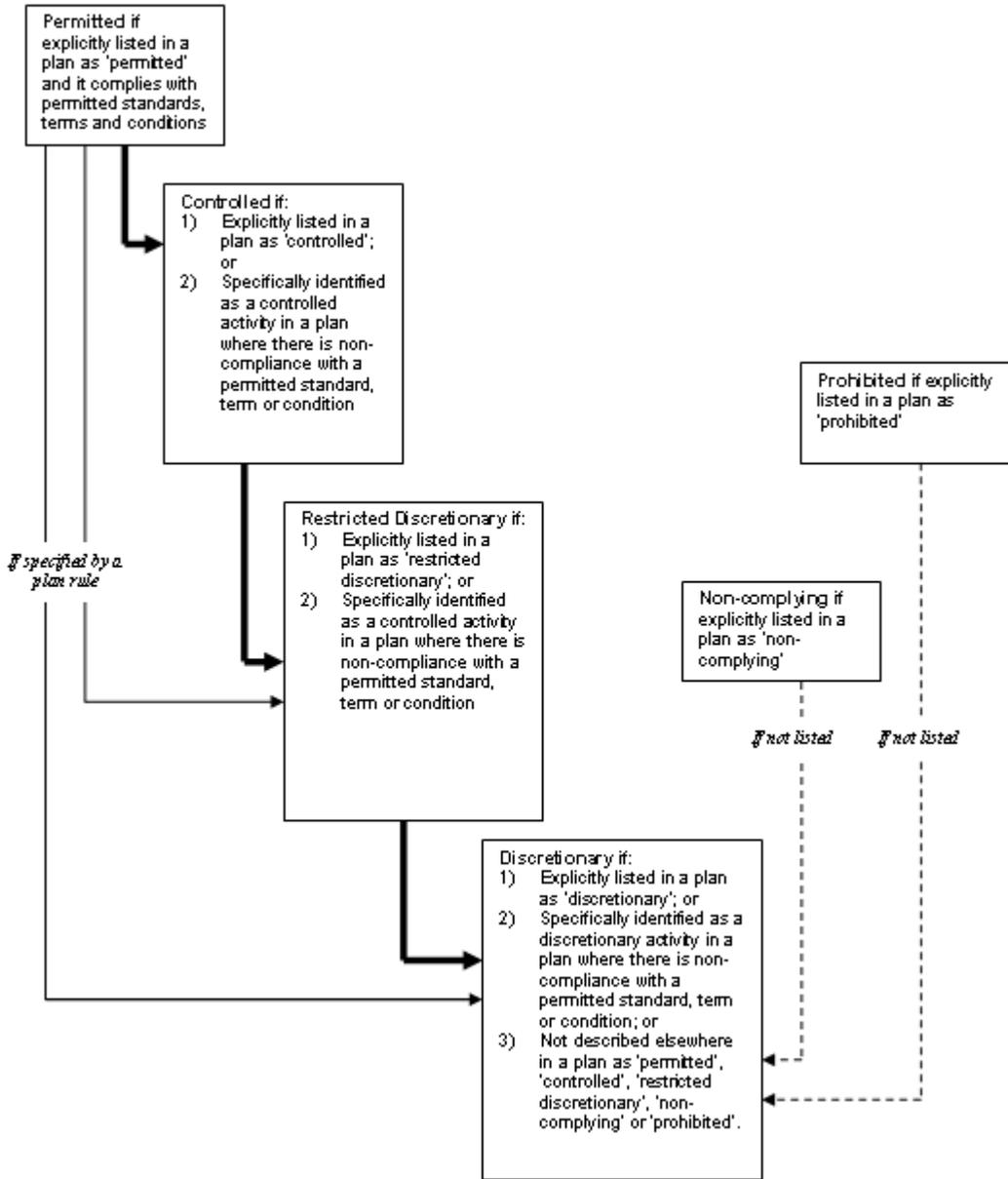
**"14.5.5.5 Discretionary activities:**

Any activity that does not comply with the requirements, conditions and permissions set out in rule 12.3.3.4".

Or:

<b>Activity</b>	<b>Requirements, conditions, permissions</b>	<b>Matters over which council reserves control</b>	<b>Non-compliance with requirements, conditions and permissions</b>
Controlled Activities  Rule 13.3.4.5  Extensions to buildings in Waipopo Character Area	a. Extensions shall not exceed 20 square metres of floor area;  b. Extensions shall not be located closer than 3 metres to any side or rear boundary of the site...  c. ...	i. Height of the proposed extension;  ii. Floor area of the proposed extension;  iii. ...	Discretionary

As shown in the diagram , the discretionary activity class often represents the bottom of the cascade as it is often used as the 'catch all' or 'default' activity class for activities causing effects not already managed through other classes (or specifically covered by the plan - see RMA ss68(5)(e) and 76(4)(e)). Note also that activities that are not classified in a plan or those that require a resource consent but are not covered by a rule in a plan default to discretionary activities under s87B. A number of plans, particularly those prepared before 1997 use the non-complying activity class in a similar manner (as an alternative to the using the discretionary activity class).





## Ideas for providing certainty in plan rules

### Why do rules have to be precise and certain?

Rules have the force and effect of regulations (ss68(2) and 76(2)). In that regard rules must be complied with and are enforceable. The general public and applicants need to have certainty over whether a proposal complies with rules in a plan and that those rules will be applied in a consistent manner. Considerable cost and time can be spent on establishing compliance and pursuing enforcement action when rules lack certainty.

Rules that contain words or phrases of uncertain or ambiguous meaning run the risk of being voided as ultra vires on the grounds of uncertainty.

Making rules precise and certain does not mean that there cannot be some flexibility. However, where flexibility is too great problems can arise. Rules should be sufficiently certain to be understandable and functional.

### The golden rule of certainty

Draft rules according to plain English principles.

### Some quick tests that could be applied

If the rules prepared match one or more of the following points then an amendment may be required.

- The rule creates uncertainty as to when or where it is to be applied (For example if the word 'there' is used, is it clear where 'there' is?).
- It is unclear what activities or effects the rule applies to.
- The rule conveys an element of discretion where none is intended.
- The rule is a standard, a threshold, or triggers another consent or activity class, and there is the potential for doubt as to what exactly the threshold or trigger point is, or how it is to be measured.
- The rule gives powers of determination (such as whether an activity will be classified as permitted or not) to a third party such as a neighbour.
- In regard to controlled or restricted discretionary activities, it is unclear or is there ambiguity over which matters the council has retained control or discretion.

### Words and phrases to avoid in rules

Some words and phrases convey more flexibility and discretion than others. The following words do not allow for clear measurable tests or thresholds and may result in difficulties in assessing compliance or enforcement of the plan (unless they have been clearly defined in the definitions chapter of the plan or another associated rule):

- reasonable (e.g. "a reasonable amount of vegetation should be retained on-site")
- appropriate (e.g. "colours shall be those appropriate to")
- approximate (e.g. "shall be approximately 10 metres from")
- inappropriate (e.g. "inappropriate stream crossing by livestock shall")



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- should (e.g. "the materials used should match those of the surrounding...")
- significant (e.g. "should be set back a significant distance from...")
- might (e.g. "any activity that might detract from")
- existing (e.g. "shall be measured according to the existing water levels for the lake")  
- it is better to have a reference to a particular point in time (or referenced water level) than to use 'existing' due to the variable nature of the environment.

The following phrases are inappropriate for permitted activities or rules which trigger a new consent/activity class as they convey an element of subjectivity or discretion:

- "at the discretion of the [council, manager of planning, engineer etc]"
- "to the satisfaction of the [council, manager of planning, engineer etc]"
- "avoid, remedy or mitigate" (eg "earthworks shall avoid, remedy or mitigate adverse effects on the archaeological sites")
- "as it sees fit"
- "where practicable" (e.g. "earthworks shall, where practicable, avoid sediment")
- "best practicable option"
- "and/or" (use one but not both).

### Use of 'not withstanding'

Some plans use the words 'not withstanding' to indicate that where provisions conflict, one rule is to prevail over the other. While this can be useful when possible conflicts cannot be foreseen, it can create difficulties when the phrase is used often. Where a possible conflict is known, consider using something similar to:

*"Where compliance with rule 13.4.2 would contravene rule 14.6.4, then the requirements of rule 13.4.2 shall prevail".*

This then removes the possibility (for example) that a 'not withstanding' statement for rule 13.4.2 will come into conflict with another 'not withstanding' rule, or is inadvertently used as a way of getting around another rule that needs to be applied.

### May - Must - Shall

'May' should be used where a power, duty, permission, benefit or privilege is given to some person, but need not be, exercised (i.e. the exercise of the duty, or permission is discretionary).

*"...in considering an application under rule 13.4.5 the council **may** consider..."*

'Must' should be used where a duty is imposed which **must** be performed.

*"...a filter system complying with the standards contained in rule 15.3.2 **must** be fitted to the outlet..."*

'Shall' is used to impose a duty or a prohibition, but can also be used to indicate the future tense. This can lead to confusion. 'Shall' can be replaced by 'must' where confusion may occur.

## Cross-references in RMA plans

Cross-referencing may take one of a number of styles such as:

- direct references to another plan provision from within an objective, policy or rule
- side notes
- tables of cross-references
- lists.

In on-line or electronic plans, bookmarks and hyperlinks are commonly used to enable the reader to be taken directly to the provision being cross-referenced.

The RMA makes no mention of cross-referencing within plans, though part 3 of schedule 1 includes clauses relating to the incorporation of external material into plans by reference. References to national environmental standards can be included without using the process in schedule 1. Good cross-referencing has become essential as plans are complex and plan users often need direction to assist them in finding their way around, or knowing what other provisions they need to refer to.

### Direct references within plan provisions

This method is commonly seen in statutes and regulations, and most often in plans when only one or two provisions are being referred to. For example:

*"Activities in the Erehwon valley must also comply with the standards relating to earthworks contained in rule 10.3.4.3",*

or

*"In considering an application for a consent under rule 6.6.1.2 the council will have regard to the matters of assessment set out in Policies 6.6.8 and 6.6.9".*

The advantages of this approach are:

- useful for providing a clear, direct, link from a rule to another plan provision when that other provision is intended to form part of the rule
- does not require changes to page layouts or additional pages to be set aside
- can be located within provisions so are clearly associated with those provisions
- does not require additional effort to format when producing an on-line (website-based) plan.

The disadvantages of this approach are:

- not very good at referencing multiple provisions if located in many parts of the plan
- cross-references tend to get 'hidden' in text or mistaken for other material
- can add to the length of plan provisions, making them harder to read
- can sometimes get mistaken for being plan provisions in their own right.



Side notes

The side note sees the side margins of the page used to display cross-references. Several variations of this see the cross-references either highlighted through techniques such as shading or italicised text, for example:

From the former Waitakere District Plan:

RULE 1.6	HELICOPTER LANDING AREAS
<p><b>1.6.1 General</b></p> <p>The following rules shall apply to all helicopter operations except those:</p> <ul style="list-style-type: none"> <li>• conducted by the RNZAF during times of civil emergency or threat to national security or associated with training for the carrying out of these activities, and</li> <li>• to or from Waitakere Hospital, where such flights are related to medical emergencies or associated with training for the carrying out of these activities.</li> </ul>	<p>Note: See also Policies 10.2, 11.13 (Policy Section of the Waitakere District Plan)</p>

From the Waitaki Water Allocation Regional Plan:

<p><b>Policy 3</b></p> <p><i>Cross-ref: Objectives 1 and 2</i></p>	<p>By setting <u>environmental flow and level regimes</u> in the water bodies of the Waitaki catchment (other than those identified in Policy 2) that enable access to water for the activities identified in Objective 2, to the extent consistent with Objective 1.</p>
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The advantages of this approach are that it:

- provides a clear and distinct indication of what is being referenced to
- does not become confused with other numbers in plan provisions
- is able to cross-reference multiple provisions if space permits
- permits references to be made to documents outside the plan (such as methods being located in another plan or strategy for example)
- can be easily combined with the 'direct reference within provisions' approach if required.

The disadvantages of this approach are that:

- it uses more space than the 'direct reference' technique
- columns can be a problem for some on-line plans and some software, computer or screen settings have difficulty in displaying them in a reader-friendly format
- lengthy lists can get out of sync with the provisions they are cross-referencing from.



**Tables of cross-references**

Another approach to cross-referencing is to have tables at the start or end of each chapter (or possibly at the start or end of the plan provisions) that summarise all the linkages between provisions as shown in the following example. **216.8 Policy linkages table**

<b>OBJECTIVE 216.3.1</b>	<b>OBJECTIVE 216.3.2</b>	<b>OBJECTIVE 216.3.3</b>	<b>OBJECTIVE 216.3.4</b>									
Maintain and develop an efficient and safe road and air transportation network that meets the needs of the District's community	Protect critical areas of interface between land and water that enable passenger and goods transport by sea.	Minimise the adverse effects of the transportation network on people and the environment.	Ensure activities do not adversely affect the safe and efficient operation of the transportation network.									
<b>Given Effect to by Policies</b>												
216.4.1	216.4.8	216.4.1	216.4.1									
216.4.2	216.4.9	216.4.6	216.4.2									
216.4.3	216.4.11	216.4.7	216.4.3									
216.4.4		216.4.8	216.4.4									
216.4.5		216.4.9	216.4.5									
216.4.6		216.4.10	216.4.11									
216.4.7		216.4.12										
216.4.12		216.4.13										
216.4.13												
<b>Environmental Results Expected</b>												
216.7.1	216.7.1	216.7.2	216.7.3 216.7.4									
<b>Policy</b>												
216.4.1	216.4.2	216.4.3	216.4.4	216.4.5	216.4.6	216.4.7	216.4.8	216.4.9	216.4.10	216.4.11	216.4.12	216.4.13
<b>Implemented by Methods</b>												
216.5.1	216.5.1	216.5.2	216.5.2	216.5.4	216.5.2	216.5.6	216.5.5	216.5.1	216.5.2	216.5.2	216.5.3	216.5.3
216.5.7	216.5.2						216.5.6	216.5.2	216.5.8		216.5.7	





The disadvantages of table approach are:

- it can-not easily provide linkages between chapters related to other issues
- dealing with multiple issues can lead to large tables that are not able to be accommodated on a single page
- it can be difficult to format and view on-line, depending on software used and user computer settings
- it is less capable of indicating when methods are located outside plans, and where those methods can be found.

**Lists**

Lists are essentially similar to the side note approach to cross-referencing, through are often found at the end of a particular provision or chapter as part of the main text rather than in a margin. A typical example might be:

**Rule 3.4.3.5**

The taking, diversion, or use of water from the Waipuku River for agricultural and horticultural purposes must meet the following standards:

- a) The rate of abstraction per lot must not exceed 1.0 litre per second;
- b) The total rate of abstraction for a combination of lots under the same certificate of title must not exceed 15 litres per second.
- c) The flow of any diversion must not exceed 5 cumecs

**Cross-ref:**

Objectives	3.4, 3.5, and 3.7
Policies	3.4.1, 3.4.3, 3.4.4 3.5.2, 3.5.4 3.7.3
Rule:	2.5.3.3(general rules for diversions)
Other methods	3.4.1 methods(i), (ii), and (iii)

The advantages of this approach are, that it is:

- able to show a vast array of information while keeping the references aligned in sync with the provision being referenced from
- able to reference to multiple provisions in different parts of the plan or to external documents.

The disadvantages of this approach are, that:

- lists can be repetitive and add to plan length if used for each provision
- lists at the end of chapters can be overlooked
- in terms of visual appearance, lists may be mistaken for being part of the plan provision.

## Ideas for the use of plain English in plans

### What is 'plain English'?

*Plain English is clear, straightforward expression, using only as many words as are necessary. It is language that avoids obscurity, inflated vocabulary and convoluted sentence construction. It is not baby talk, nor is it a simplified version of the English language. Writers of plain English let their audience concentrate on the message instead of being distracted by complicated language. They make sure that their audience understands the message easily.*

(Professor Robert Eagleson -University of Sydney)

Writing plans in plain English does not mean avoiding complex information to make a plan easier to understand. For plan users to make informed decisions, planning documents may have to convey complex information. Using plain English assures the orderly and clear presentation of complex information, so that plan readers have the best possible chance of understanding it.

Plain English means analysing and deciding what information plan users and decision makers will need to make informed decisions, before terms, provisions, or explanations are used.

### Key principles

The 10 most important principles in plain English writing are:

1. **Think of your reader's needs** - what is it that they need to know? What level are they reading at? (See also principle 8.)
2. **Organise your content well** - have a clear structure and know what your key message is
3. **Write in a natural style, as if you were talking to the reader** - this assists in flow and simple sentence structure. Care needs to be taken to avoid colloquialisms.
4. **Keep sentences short** -this avoids making the reader process too many ideas at once. It also reduces the risk of confusion over the relationships between verbs, adjectives, and subjects. It helps if you keep each sentence to one key topic.
5. **Use active verbs** and try to avoid lengthy noun phrases where possible (for example "the Court decided" is better than "it has been decided by the Court";



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and "a decision to amend a regulation by the district council" is better than "a district council regulation amendment decision")

- 6. **Be specific rather than general** - for example instead of 'regularly' specify time intervals (monthly, quarterly, yearly)
- 7. **Cut all redundant words and phrases** - ask yourself if the word or phrase is needed for grammatical correctness or is important to get the message across. Words are redundant when they can be replaced with fewer words that mean the same thing.

Sometimes you can use a simpler word for these phrases:

Phrase with redundant words	Replace with
in order to	to
in the event that	if
subsequent to	after
prior to	before
despite the fact that	although
because of the fact that	because
in light of	because
owing to the fact that because	since
as to whether	whether
The said parties	The parties

- 8. **Use simpler words rather than complex words** - avoid archaic words unless there is no word of accepted equivalent meaning. For example:

Legalese, complex or archaic	Simpler
pursuant to	under
prior to	before
terminate	end
elucidate	explain
utilise	use
deemed	regarded/treated



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	as
in lieu of	instead of
in like manner as	in the same way
otherwise than	except
hereinafter	as follows subsequently

9.

**Cut down on jargon and acronyms.** However for legal and interpretative reasons it is advisable that plans use the same terminology and phrases as contained in the RMA. These terms and phrases often have specific legal meanings and an established body of case law behind them that assists in interpretation. If you have to use a term not in common usage then ensure it is defined in plain English terms in the definitions section.

Abbreviations should be avoided as they can lead to confusion or misdirect people to documents, policies etc. that are out of date. If there is likely to be any doubt, spell it out.

10. **Edit vigorously** - never underestimate the value of one or more ruthless edits. Look at each phrase and ask if there is a simpler, more direct, way of expressing it. Get someone who was not involved in the writing to read through and see if they can understand what is being said.

**Other tips**

- **Write 'in the positive'**- positive sentences are shorter and easier to understand than their negative counterparts. For example use 'is similar to' instead of 'is not dissimilar to'.
- **Replace a negative phrase** with a single word that means the same thing. For example:

Negative compound	Single Word
not able	unable
not accept	decline
not unlike	similar
does not have	omits
not many	few



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not often	rarely
not the same	different
not ...unless	if

- **Use lists where appropriate** - lists are excellent for splitting information up, making it easier to read and understand the content of the list. There are two main types of list.
  1. You can have a continuous sentence with several listed points picked out at the beginning, middle or end.
  2. You can have a list of separate sentences with or without an introductory statement (like this list).

For a list with short points, plain English editors suggest setting it out like this:

*The matters over which the Council retains control are:*

- vehicle access
- clearance of vegetation
- volume of earthworks.

Lists may be bulleted, or numbered in various formats. Those comprising separate sentences have an initial capital and normal punctuation. Lists that are part of a continuous sentence may have semicolons (;) after each point and start each point with a capital. Ministry for the Environment style uses lower case for such items and only a full stop after the last item in the list. Many valid styles exist - the main thing is consistency within each document.

Adapted from:

New Zealand Law Commission (1996) Legislation Manual: Structure and Style, Report 35, Law Commission Wellington.

Office of Investor Education and Assistance (1998) A Plain English Handbook U.S. Securities and Exchange Commission, Washington DC.

With particular reference to legal writing:

[Clarity: an international association promoting plain legal language](#)

## Promoting internal consistency in RMA plans

### Why consistency is important

Consistency within and between plans promotes certainty and familiarity and lessens problems associated with interpretation and unintended consequences. More specifically, use of the same phrases and terminology:

- means that experience gained in the application or implementation of provisions in one part of the plan, can be applied more easily to other parts of the plan where that term or phrase is used
- increases certainty in interpretation, as readers don't have to think about whether slight variances will result in significant changes of meaning; and there is less likelihood of misinterpretation
- improves the ability of new staff to quickly understand the structure of the plan and the way in which provisions in it are to be interpreted.

### Ideas for promoting internal consistency

#### Drafting protocols/guidelines/style guides

These are documents produced within the council itself and combine legal requirements, good practice, and council requirements for plan provision drafting into a style guide. The document then becomes a key reference for all those involved in drafting plan provisions to follow. Drafting protocols and guidelines may contain:

- an explicit statement of what the protocol or guidelines are designed to achieve
- the goals adopted for the drafting of the plan (such as the philosophical approach taken to the permissiveness or restrictiveness of the plan, the degree of simplicity in language and standards desired, or what the plan should be working towards achieving)
- the principles to be followed in drafting the plan
- an outline of the plan format and how provisions are intended to relate to each other
- examples that illustrate the style in which provisions are to be drafted
- protocols in regard to reviewing and checking against the guidelines or protocols (such as whether a style champion has been appointed or not, what the roles of the champion are, or protocols regarding peer reviews and self-checking).

Good practice tips for drafting protocols and guidelines include:

- approach writing the content of the guideline or protocol from the perspective of a staff member who has recently joined the council but has some RMA experience already (don't assume staff already have knowledge of how the local authority does things or how provisions have been written in the past)
- include examples of what is meant wherever possible
- ensure everyone who will be involved in drafting has an opportunity to input into the drafting before the guidelines or protocols are finalised. This is important to maintain



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a sense of ownership, commitment and understanding of why the document exists and what it contains

- involve consent planning staff in developing the protocol or guidelines. What do they want to see included? What do their experiences in using existing plans tell you about what needs to be included or avoided in the next plan?

### Style 'champions' and watchdogs

Appointing a person within the drafting team who monitors and checks for issues of consistency in style, terminology can assist. This person has the role of ensuring others are reminded of, and are adhering to, the style, phrasing and terminology chosen for the plan. In the past this task has often been the de facto role of the project leader or manager, but it can be given to any experienced person within the drafting or editing team. In using this technique it is important that:

- this champion is fully aware of all the style requirements adopted by the council and good practice in plan provision drafting
- the champion has some form of guide or objective set of criteria that serve as prompts or reference checks that can be used by both the person doing the initial drafting and the champion in checking
- processes are in place that ensure this person sees and has time to check and amend (or make recommendations on) all plan provisions, changes, and variations before they reach the notification (or council approval) stage
- the person chosen is able to provide constructive feedback on style and what is needed to keep it consistent
- all members of the drafting team accept the role of the champion and are comfortable with it (reminders may need to be given periodically to the effect that the champion is there to assist in ensuring a consistent end product that meets pre-agreed standards).

### Style and content edits

As well as checking and editing to eliminate grammatical and technical errors, a dedicated edit for consistency of style and content may be carried out. Checking against the drafting protocol can assist with this. Other good practice ideas for checking content and style include:

- using a professional editor, technical writer, or journalist to read through the document and see if they can pick up inconsistencies in style, or suggest ideas to make the plan easier to read (they are usually very familiar with the principles of the plain English writing style).
- ensure that new provisions are peer-reviewed by a person who is familiar with the plan (the writer may see what is supposed to be there, rather than what is actually written).

## Legal review

Legal reviews are usually carried out to check the legality and robustness of policy statement or plan provisions. In checking provisions, lawyers can also pick up on inconsistencies in the way provisions are expressed and on terminology of legal principles and case law. As legal reviews typically come towards the end of the pre-notification drafting phase, they should not be relied on as the primary method of checking consistency. Also, having a lawyer check for style and consistency of wording throughout a plan may not represent the best use of the lawyer's time or expertise. In some circumstances having a lawyer just look at key phrases that are used throughout the plan, or wording concerning areas that are particularly contentious, may be more cost-effective.

- If your council has adopted and documented a particular style, make sure that the lawyer is aware of this (perhaps by circulating a copy of drafting guidelines or reports that set out the adopted style). Ideally lawyers should have been party to the development of that style.

## Templates

Some councils use templates in place of, or as part of, style guides. Electronic templates can be used to ensure fonts are appropriate to the various level of headings, and general plan text. More advanced electronic templates can assist in numbering plan provisions, and can also contain prompts to remind the writer of key considerations or tasks when drafting.

## **Testing issues for RMA Plans**

### **Why test issues?**

Not all issues that come to a local authority's attention need to be addressed through RMA plans, and not all issues will require a regulatory response. Regional and district plans are part of a much larger suite of tools that are available to address matters.

Incorporating issues into plans without first testing them can result in plans that are unnecessarily complex or lengthy, or that tend to over-regulate. This could add costs to the community and the council through the extra effort needed to research and write provisions for the plan, and additional consent applications subsequently needing to be lodged.

There is no need to list everything that appears to be an issue in a plan. Issues need to be tested to determine if it really is an issue, and whether it warrants inclusion in the plan. To do this a series of questions can be asked in relation to each potential issue.

### **Is there really an issue?**

Before even thinking about resolving an issue there is a need to be clear that it does in fact exist. Questions that can assist in testing this include:



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- What factual evidence supports that the issue exists and that it is causing or is likely to cause effects? For example are there:
  - independent, credible, witnesses?
  - observable evidence?
  - technical reports relevant to the district or region that identify the issue?
- Are the effects generated positive or negative?
  - if the effects are positive - do you want, or need, to manage it?
  - are there side effects or consequential effects that need to be managed?
- If the issue has not yet occurred, is there a realistic chance of it occurring within the lifetime of the plan? In the case of issues or effects that are cumulative or may not manifest themselves for some years a supplementary question could be "would managing the issue now avoid or mitigate the effects in future?" To assist in answering this question consider:
  - Are there relevant precedents that can be drawn on?
  - What credible evidence exists, indicating the probability of the issue causing effects in the lifetime of the plan?
  - What evidence is there to indicate that intervention through an RMA plan will be effective in avoiding or mitigating effects in the long term?
- Is the issue related to an opportunity (for example a change to enhance amenity or biodiversity)? If so:
  - Does the council need to actively manage the opportunity or will it occur without council involvement?
  - Will council involvement add value or improve the quality of the outcome?
  - Is the opportunity best managed through an RMA plan or would some form of cooperation, action, or agreement outside the plan be more effective?

### **Symptom or cause?**

Sometimes what is being presented as being an issue is the symptom rather than the issue. It is important not to take things at face value and look further into the circumstances around the issue:

- Why is there an issue?
- What events led to this becoming an issue?
- Are there matters beyond the immediate site or area that are contributing to the issue? If so, how did these matters come about?

Answering these questions helps to identify whether there is an issue and how to address it. Notably, reverse sensitivity situations often give rise to complaints that present the symptoms but not the real cause. For example repeated complaints regarding noise from farming operations may not be the result of increasingly noisy machinery, but the fact that recent residential development has introduced into an area more people sensitive to the noise of existing operations.



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There are several techniques that can assist in revealing the underlying issue such as:

- 'Five whys': Start with what appears to be the issue, and ask why it has occurred (or why it would occur). Take the answer to your first question, and ask why those circumstances occurred. Repeat the exercise (usually up to five times) until you have a revealing answer or have found it impossible to answer 'why' again.
- 'De Bono's Hats ': Approach the issue from several angles in terms of the key parties. What might be motives for each party? What are they trying to promote or avoid? Whose motives conflict and why?
- Consultative processes (e.g. focus groups). Triangulation in consultation (i.e. actively seeking the views of parties on both sides of the issue, and independent observers) can assist the plan writer verifying the legitimacy (or otherwise) of an issue and possible causes.

### **How significant is the issue?**

Once the real issue has been identified, the next step is gauge how significant the issue is. If the issue is insignificant, it may be an inefficient use of resources to deal with it through a regional or district plan.

At present there are no formal guidelines that objectively distinguish what issues are significant to a region or district. Consultation either through the RMA or LGA processes can assist in determining what is important to a community generally. However the community may not be aware of all issues that are significant, or may miss the significance of issues that do not receive media coverage or publicity.

Asking the following questions may assist practitioners in determining the significance of an issue:

- Does the issue specifically relate to any of the matters contained in sections 6-8 of the RMA?
- Does the issue threaten or undermine a heritage order or water conservation order?
- Has there been widespread public concern expressed in relation to the issue? (Have there been many, repeated, complaints or submissions in regard it, or just a few?)
- Is the resource or feature to which the issue relates an icon for the district or region?
- What is the nature of the resource that is being affected? (For example an issue could be significant if it affects a rare or endangered resource, or a resource that is highly valued by the community and which cannot be replaced once gone.)
- Does the issue concern a resource or feature that plays a crucial role in enabling people in the region or district to provide for their social, economic and cultural wellbeing?
- Has the issue been identified in a technical report or other expert advice as being significant? (For example, has a report identified a particular area prone to major flooding?)
- What is the scale or level of risk of the effects associated with the activity? (An issue affecting one pine tree is not likely to be as significant as one affecting many hectares of endangered forest.)



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- What is the extent of the activity? (Think geographically or in terms of the number of people affected.)
- Is it a significant cross-boundary issue? Does it require coordination through a regional policy statement or a combined planning document?

### **Whose issue is it?**

Having identified that an issue exists and that it is of significance to require action, a logical next question in determining whether it should be included in an RMA plan is to check who has responsibility for the issue. A vast range of issues are dealt with by authorities or agencies other than councils. Examples of other agencies include:

- Civil Aviation Authority
- Department of Conservation
- Health Boards
- Maritime Safety Authority
- Ministry for Primary Industries
- Ministry of Business Innovation and Employment
- Ministry of Health
- New Zealand Police
- New Zealand Transport Agency
- Another tier of local government.

Questions that could help guide thinking in terms of deciding whose issue it is include:

- Is the issue within the functions given to the council under s30 or s31 of the RMA? (If not, then it should not be controlled through an RMA plan.)
- What other legislation may be the primary statute for managing the issue, and who is responsible for administering that legislation?
- Are the existing legislative provisions and authorities sufficient to manage the issue? (If not, then consider whether there is an overlap or gap and whether the RMA plan has a role in managing the overlap or gap.)

### **What ways are there to manage the issue?**

Having established that the issue is one that needs to be managed, and is the responsibility of the council, the final question asks if there are other means available to the council, so that dealing with it through a RMA plan is not necessary. Such other means could include:

- annual plan projects (the funding allocated could advance or delay an infrastructure project, for example)
- reserve management plans or acquisition of land for reserves.
- covenants
- asset management plans
- financial incentives (such as rates relief)
- delegation of functions or transfer of powers (ss33 and 34A)



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- education programmes
- memoranda of understanding, or agreements
- engineering standards and codes of practice
- liquor licensing
- bylaws.

Note that the list above is not mutually exclusive: more than one means (including plan provisions) may be employed to deal with different aspects of the same issue.

### **Zoning as a tool in plans**

Zoning is a long-used technique used to divide areas of land or water into distinct areas in order to manage effects, activities or uses. Zoning has been described as allowing “the district plan to create bundles of activities considered generally appropriate in each zone or area, in recognising the constraints of the environment and that some activities may not be appropriate in every location”.

While the terms 'environments', or 'management areas' are sometimes used in place of zoning, the principles and objectives are essentially the same, for example:

- management or separation of incompatible uses
- avoidance of hazards
- identification and management of areas where similar outcomes are sought or bundles of effects need to be managed.

The technique of zoning has been criticised by some as being too directive or inflexible, however the fact remains that differentiation of any regulations according to geographic areas results in something that is analogous to a zone. In many cases analysis of the criticism of zoning shows that it is the regulation rather than the zoning triggers that are at issue (not the idea of the zoning itself), or the way in which some councils have allocated or changed zoning that is of concern.

### **Legitimacy of zoning as a tool under the RMA**

While there have been numerous Environment Court cases dealing with zoning, most have related to the appropriateness of a certain zone, or rules that the zone triggers. Few cases have challenged zoning as a tool for use in RMA plans, and none have found that zoning, as a tool or method, is inappropriate within the context of the RMA. But what is also clear from case law is that zoning is a technique or method to achieve the objectives and policies of a plan, and is not an outcome in itself.

### **Practice in zoning under the RMA**

Do:

- treat zoning as being a method to geographically delineate those areas where certain effects are acceptable or not acceptable, or where certain management tools are to be applied



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- test proposed zoning in terms of:
  - its appropriateness in reflecting current uses
  - whether the zoning is appropriate to achieve the purpose of the RMA and objectives and policies of the plan
  - whether the proposed zoning achieves integrated management of the effects of the use, development, or protection of the land or water ; and
  - whether it controls the potential effects of the use, development, or protection of the land or water.

### Avoid:

- using zoning under previous plans as an automatic starting point without reviewing whether such zoning is still the most appropriate management approach under a new plan or plan change
- zoning land to allow an activity when the infrastructure necessary to allow that activity to occur without adverse environmental effects does not exist, and there is no commitment to provide it.

### **Scheduling as an alternative to 'spot zoning'**

In some cases existing uses within a particular zone are of a nature that would be inconsistent with the zone objectives and policies. While the existing character of the use can be recognised under RMA s10, any changes to the activity may require multiple resource consents to be lodged to ensure its lawfulness. In the past some plans have introduced 'spot zones' that apply certain development opportunities and controls to just one or two sites to get around this problem.

The inherent danger in spot zoning is that the number of spot zones can quickly multiply and overly complicate the plan. An alternative approach is to 'schedule ' certain sites to allow for their continued use and development, within certain parameters to ensure the acceptability of environmental effects. Some of the factors for adopting scheduling could include:

- agreements between stakeholders as to the use of the technique
- ability to identify particular sites
- ability to develop the formal standards and/or criteria for operation
- the nature of the activity and its scope
- potential impacts
- available resources on which scheduling would depend.

A schedule could take the form of a table in the plan conveying the following information:

- scheduled site number (if there is more than one site on the schedule)
- applicable planning map reference (number)
- permitted activities for the site
- legal description of the site
- conditions applicable to the site and permitted activities.



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This material would be accompanied by a general statement explaining the reasons for adopting the method and its purpose, together with such objective(s) and policies as deemed appropriate and explanatory material describing how the schedule operates.

### The planning process cycle under the RMA

The key steps in the public policy cycle are also logical steps in plan development:

1. identifying the issue
2. setting objectives in relation to the issue
3. choosing and evaluating the policy and methods to achieve the objective
4. implementing the policy and objectives through the chosen methods
5. monitoring and evaluating the effectiveness of the policies, methods, and the environment.

A plan needs only to contain objectives, policies and rules. However, the complete planning process is a logical model to use in plan development and monitoring, and many of the steps are implicit within the duties and requirements of other sections of the RMA (such as ss32 and 35). Provisions, other than objectives, policies and rules can be contained in external documents. The diagram below shows such an arrangement.

Section 79 allows councils to amend any provision of regional or district plans. The section also requires councils to review provisions of regional and district plans at least every 10 years; in so doing councils can choose to amend only the parts of the plan that need to be amended, to be brought up to date. The above planning policy cycle process is equally applicable and relevant to such a rolling process.

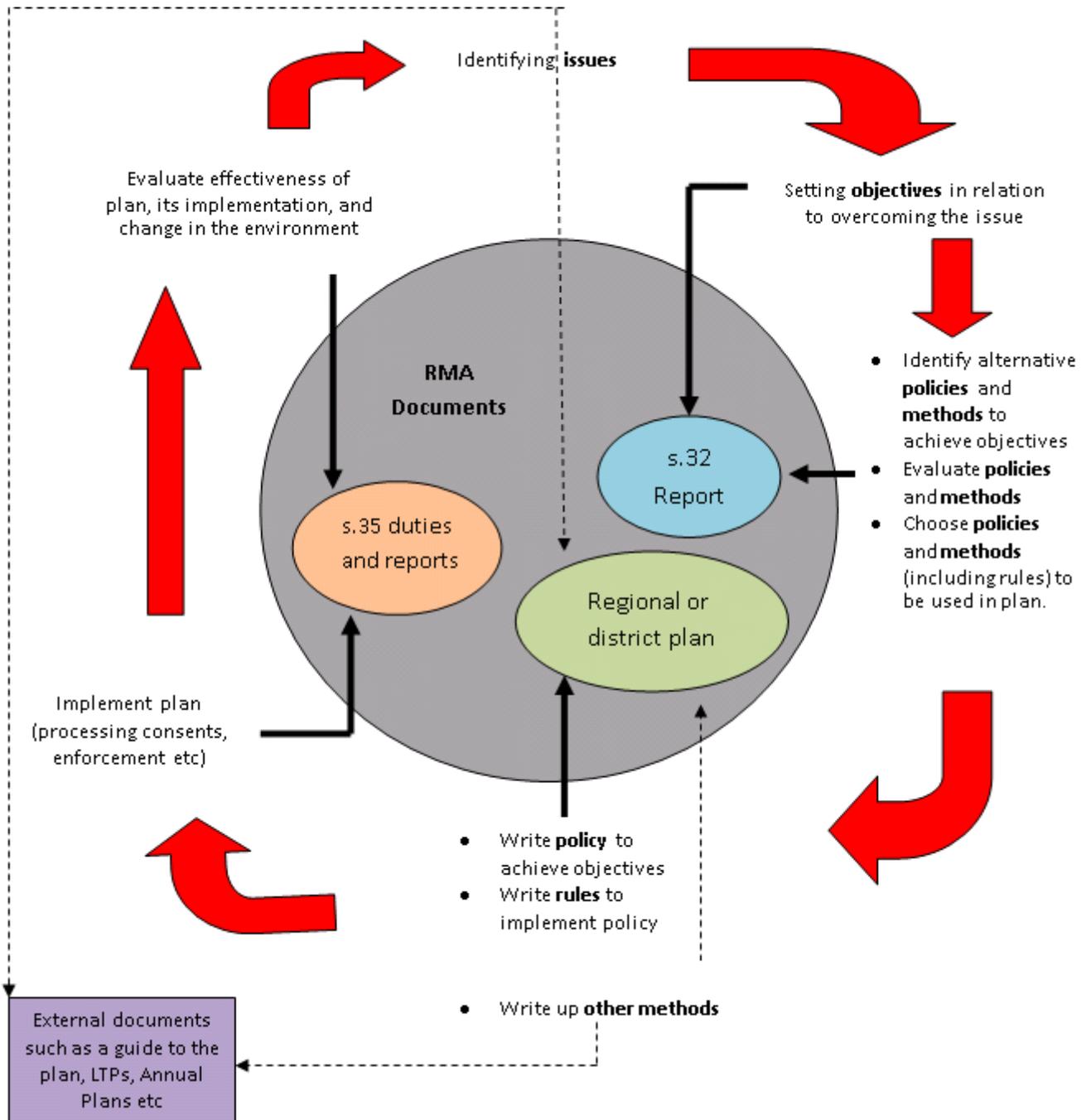
1. **Issues:** As an alternative to containing issues in the plan, these could be contained in s32 reports (forming part of the justification for provisions of the plan). It is difficult to evaluate the extent to which objectives are appropriate to achieve the purpose of the RMA without having reference to issues. Therefore issues are usually explicitly covered in s32 evaluation reports. Alternatively, issues could form part of the explanatory material in a guide to a plan. Such a guide may not have a statutory function, but would enable plan users to understand why certain provisions existed, and what effects were sought to be avoided, remedied or mitigated. It could also be referred to in making decisions on resource consents as an 'other matter' under s104(1)(d).
2. **Objectives** in relation to issues: These are mandatory in RMA plans, but each objective is also required to be evaluated (in terms of appropriateness) under s32(1)(a). Refer to the [section 32 guidance](#) for further information.
3. Choosing and evaluating **policies, rules and other methods** to achieve the objectives forms a critical part of the s32 evaluation process to the extent that the policies, rules and other methods, and the justification for their existence, and the consideration of them against other potential policies and methods, will be covered. Having chosen the policies, rules and other methods to be used, these may then be drafted for inclusion in the plan. It is mandatory for the plan to contain the policies and rules (with rules being a method), but methods other



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than rules could be transferred to other documentation either as information (for example, in a guide to the plan) or as capital or operational programmes (in which case they may appear in Long Term Plans, annual plans, or asset management plans for example).

4. The way in which plan provisions are implemented are not recorded in the plan itself. However s35 of the RMA requires councils to keep records of decisions made with respect to notification and service of notice decisions made on consents, and complaints about breaches of the RMA and RMA plans (amongst other things). This information forms an important resource for reviewing plan provisions and identifying new issues; a summary of it could appear in background reports to a plan review.
5. **Monitoring the effectiveness and efficiency** of plans is also a mandatory requirement under s35. The results of this monitoring are required to be made available to the public at intervals of no more than five years. Information relevant to this duty, such as environmental results expected, can be placed in documents outside the plan (such as in s35(2)(b) reports). Refer to the guidance note on [policy and plan effectiveness](#) for further information.



Note: Use of a dashed line indicates items of the public policy or planning cycle that can be contained in plans at the discretion of a local authority, but are not mandatory.

## Example issues

### Regional plan issues

#### Issue 1

Discharges of contaminants from agricultural activities into rivers, streams and lakes in the Erehwon Region reduce water quality and can damage aquatic ecosystems by increasing the levels of suspended solids, nutrients and faecal coliforms.

#### Issue 2

Poorly managed earthworks and land clearance, and land cultivation accelerates erosion in the Waipopo hill country and contributes to decreased water quality in the Monowai River through increased sediment loadings.

#### Issue 3

Use and development in the coastal marine area near Port Whangarua can have an adverse on the navigation and safety of ships by obstructing the use of navigable waterways, altering water currents, or contributing to changes to the form of the coast and seabed through accretion and erosion.

### District plan issues

#### Issue 1

Intensification of land use and development in the rural environment of Whatsup District can adversely affect the visual and scenic character, and health, safety and enjoyment of residents by changing the appearance of the area and increasing noise, vibration and traffic.

#### Issue 2

Increases in the area of land used for residential purposes throughout the Whatsup District can result in the loss of areas of significant indigenous vegetation, and the drainage of wetlands with high levels of biodiversity.

#### Issue 3

The use of land for more intensive forms of development in hazard-prone areas throughout the Whatsup District can exacerbate existing landslip, erosion, inundation and falling debris hazards, threatening the health and safety of residents and increasing the risk of damage to buildings and property.



**Example plan issues, objectives and policies**

**Regional plan examples**

**Note:** The first example deals with an issue that occurs throughout the fictional Erewhon Region. The second example deals with an issue that is discrete to one part of the Erewhon Region.

<p><b>Issue 1:</b></p> <p>Discharges of contaminants from agricultural activities into rivers, streams and lakes in the Erewhon Region reduce water quality and can damage aquatic ecosystems by increasing the levels of suspended solids, nutrients and faecal coliforms.</p>	
<p><b>Objective 1.1</b></p> <p>To reduce the level of suspended solids, nutrients and faecal coliforms in rivers, streams and lakes in the Erewhon Region resulting from discharges from agricultural activities to a level that maintains or enhances aquatic ecosystems.</p>	
<p><b>Policy 1.1.1</b></p> <p>All dairy-shed effluent associated with farming activities near a river, stream or lake in the Erewhon Region should be disposed of to land, taking into account:</p> <ul style="list-style-type: none"> <li>a) The degree to which topography enables effluent runoff to avoid discharge to surface water bodies;</li> <li>b) The degree to which weather and soil conditions enable disposal to land all year round;</li> <li>c) The assimilative capacity of the receiving environment; and</li> <li>d) The volume of effluent to be discharged.</li> </ul>	<p>Refer to objectives 1.1 and 6.2</p>
<p><b>Policy 1.1.2</b></p> <p>Land uses in the rural areas of the Erewhon region should retain or increase the proportion of lake shore and stream and river bank planted with riparian vegetation to act as a barrier or filter for diffuse source discharges and runoff.</p>	<p>Refer to objective 1.1</p>
<p><b>Issue 2:</b></p> <p>Activities on, in, or under the bed of Lake Waeroa, including the building and location of structures, reclamation works, and extraction of gravel, can damage or destroy the ecology of the lake by contributing to erosion, sedimentation, plant life and fish spawning areas.</p>	



<p><b>Objective 2.1</b></p> <p>To avoid further erosion or sedimentation of Lake Waeroa and the Lake Waeroa bed and damage to the ecology of the lake arising from activities that build, locate or operate on, in or under the lake bed.</p>	<p><b>Refer to issues 2 and 6</b></p>
<p><b>Policy 2.1.1</b></p> <p>Structures and activities in, on, or under the bed of Lake Waeroa should be located, operated and managed in such a way that avoids:</p> <ul style="list-style-type: none"> <li>a) Damage or destruction to the habitat of aquatic and terrestrial flora and fauna including fish;</li> <li>b) Erosion or accretion of the lake bed or shoreline;</li> <li>c) Exposure or destabilisation of existing structures on the bed or shoreline;</li> <li>d) A decrease in water quality.</li> </ul>	<p><b>Refer to objectives 2.1</b></p>
<p><b>Policy 2.1.2</b></p> <p>Any man-made disturbance to the bed of Lake Waeroa should be carried out in a location and at a time that will avoid or mitigate any adverse effects on fish spawning or migration.</p>	<p><b>Refer to objective 2.1</b></p>

**District Plan examples**

Note: The first example deals with an example of an issue that occurs throughout the fictional Whatsup District. The second example deals with an issue that is discrete to one part of the Whatsup District.

<p><b>Issue 1:</b></p> <p>Intensification of land use and development in the rural environment of Whatsup District can adversely affect the visual and scenic character, and health, safety and enjoyment of residents by changing the appearance of the area and increasing noise, vibration and traffic.</p>	
<p><b>Objective 1.1</b></p> <p>To retain and protect the significant landscape features and ecological areas that contribute to the scenic character of the Whatsup District rural environment.</p> <p><b>Objective 1.2</b></p> <p>To ensure that new development is consistent with, and does adversely affect, the open, small scale development, character of the Whatsup District rural environment.</p>	



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<p><b>Policy 1.1.1</b></p> <p>All new development in the rural environment of the Whatsup District should be located in a position, or in such a way, that avoids adverse visual impacts on identified significant landscape features and ecological areas.</p>	<p>Refer to objective 1.1 and Annex B.</p>
<p><b>Policy 1.2.1</b></p> <p>All new development in the Whatsup District rural environment should be of the same small scale and low density that constitutes the predominant character of the rural environment.</p>	<p>Refer to objective 1.2</p>
<p><b>Issue 2:</b></p> <p>Noise from the Whatamata International Airport can have an adverse effect on the health and wellbeing of people living in the expanding suburb Whatamata West.</p>	
<p><b>Objective 2.1</b></p> <p>To enable the continued operation of the Whatamata International Airport while ensuring the noise received by people living or working in Whatamata West is maintained at a level that does not compromise their health and wellbeing.</p>	
<p><b>Policy 2.1.1</b></p> <p>Ground based activities and the operation of aircraft that is not immediately before or after flight should be managed to avoid adversely affect health and wellbeing of existing areas of Whatamata West.</p>	<p>Refer to objective 2.1</p>
<p><b>Policy 2.2.1</b></p> <p>New activities, land use and development around the Whatamata International airport should:</p> <ul style="list-style-type: none"> <li>a) be of a type that is unaffected by the noise generated by aircraft; or</li> <li>b) incorporate measures that reduce the adverse effects of the noise being received to levels that do not result in adverse effects on human health and wellbeing.</li> </ul>	<p>Refer to objective 2.1</p>

## Example District Plan rules

The following examples are hypothetical representations of rules written in accordance with best practice guidelines. While not shown here, cross references to policies and objectives would be appropriate.

The formats in the following rules are for example purposes only. Their purpose is to demonstrate how rules could be worded and possibly linked within a rule and to other rules.

An alternative to listing activities under each activity class is to tabulate them. Some existing plans take this concept further by having all the rules written up as a table.

### Tables

A table that outlines rules is useful for two reasons. First, it can be used as a drafting tool to test the thresholds for rules. It provides an effective way of checking rules that overlap or repeat, and finding gaps. It also lets practitioners review the cumulative effect of all the rules applicable (eg for activity consent status).

Second, tables can be used to confirm which rules apply in different parts of the district/region and for which activities.

Italics are used here to denote terms that would be included in the definitions section of the district plan.

## Permitted Activity Rules: Example 1

### Permitted activities

#### 12.1.1.1 Permitted Activities

The following activities are permitted in the Residential A zone provided that they comply with the permitted activity requirements, conditions and permissions:

- a) Residential activities;
- b) Home based businesses;
- c) Temporary Events.

### Permitted activity requirements, conditions and permissions

#### 12.1.1.2 Residential Amenity

- a. The height of any building or structure in the Residential A zone shall not exceed 10 metres.
- b. The following separation distances shall be provided between buildings and lot boundaries:
  - i. Front boundary: 2.5 metres
  - ii. Side boundaries: 1.5 metres



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- iii. Rear boundaries: 2.0 metres
- c. Noise from any activity in the Residential A zone shall not exceed:
  - i. 7am to 7pm Monday to Saturday: 50 dBA (L10)
  - ii. 7pm to 10pm Friday and Saturday: 45 dBA (L10)
  - iii. All other times: 40 dBA (L10).
- d. In addition to (b), no single noise event shall exceed 75 dBA (LMax) between the hours of 10pm and 7am.
- e. Noise shall be measure in accordance with NZS: XXXX.

**12.1.1.3: Home-based Businesses**

- a) Home-based businesses shall not employ more than two persons (whether resident or not) on any site or in any building on that site.
- b) No equipment, materials, products, by-products or refuse associated with the home-based business shall be stored outside the building or buildings from which the business operates.
- c) Etc.,

**12.1.1.4: Traffic and Parking**

All activities in the Residential A zone shall comply with the traffic management and parking standards contained in rule 9.5.5.3.

**Permitted Activity Rules: Example 2**

**Rural A zone**

**Permitted Activities**

<b>Activity</b>	<b>Requirements, conditions and permissions to be complied with</b>	<b>Non-compliance</b>	<b>Applicable objectives and policies</b>
<p><b>Rule 21.1.2.1</b></p> <p>Temporary Events (refer section 10.1 for definition)</p>	<ul style="list-style-type: none"> <li>a) The temporary event shall occur no more than 4 times within a calendar year;</li> <li>b) No temporary event shall exceed a maximum of 3 consecutive days' duration;</li> <li>c) No temporary event shall operate or take place outside the hours of:               <ul style="list-style-type: none"> <li>i. 7am to 10pm Monday to Saturday; and</li> </ul> </li> </ul>	<p>Any activity that does not comply with the requirements, conditions and permissions is a restricted discretionary activity (refer rule 21.1.5.1).</p>	<p><b>Objective:</b></p> <p>9.3</p> <p><b>Policies:</b></p> <p>9.3.1</p> <p>9.3.3</p> <p>9.3.4</p>



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	<ul style="list-style-type: none"> <li>ii. 9am to 9pm Sunday;</li> <li>d) Any single structure associated with a temporary event shall not exceed: <ul style="list-style-type: none"> <li>i. 12 metres in height; or</li> <li>ii. A floor area, or impermeable surface coverage area, of 30m<sup>2</sup>.</li> </ul> </li> </ul>		
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**Controlled Activity Rule: Example 1**

**Controlled activities**

**12.1.2.1 Controlled Activities**

The following activities are controlled in the Residential A zone provided they comply with requirements, conditions and permissions set out in rule 12.1.2.2 and 12.1.2.3:

- a) Subdivision for the purpose of boundary adjustment;
- b) Subdivision to create service corridors for network utilities.

**Controlled activity requirements, conditions and permissions**

**12.1.2.2 Boundary Adjustments**

- a) The lots affected by the boundary alteration shall continue to comply with the minimum lot sizes for the Residential A zone set out in rule 12.1.1.6; or
- b) Where the boundary alteration affects lots that are smaller than the minimum permitted size for the Residential A zone, the boundary alteration should not result in any further reduction in lot size; and
- c) Boundary alternations must not deny access to any lot that has existing access to, or legal frontage to a road.

**12.1.2.3 Subdivision for Services**

- a) New lots created to provide a corridor for services must not extinguish another existing lot 's legal frontage or access to a road.
- b) ...



**Matters of control**

**12.1.2.4 Matters of Control for Boundary Adjustments:**

The matters over which the Whatsup District Council retains control for the purposes of rule 12.1.2.1(a) are:

- a) The size of lots that would exist after a boundary adjustment; and
- b) Legal and physical access to and from lots affected by the boundary adjustment.

**12.1.2.5 Matters of Control for Creation of Service Corridor Lots**

The matters over which the council retains control for the purposes of rule 12.1.2.1(b) are: ...

**Controlled Activity Rule: Example 2**

**Wharetawhito Heritage Policy Area**

**(Planning maps B7, C7, and D8)**

**Controlled Activities**

<b>Activity</b>	<b>Requirements, conditions and permissions to be complied with</b>	<b>Matters over which the council reserves control:</b>	<b>Applicable objectives and policies</b>
<p><b>Rule: 7.2.1.1</b></p> <p>External minor modifications or alteration to category 2 heritage buildings and structures in the Wharetawhito Heritage Area</p>	<ul style="list-style-type: none"> <li>a) The permitted requirements in rule 7.1.1.1(a) -(d) for height, scale, location and site coverage;</li> <li>b) External modifications or alterations shall be constructed from the same materials as the building or structure being modified or altered;</li> <li>c) External modifications or alterations shall not result in the destruction, alteration or modification of any other building or structure other than which the consent was applied for;</li> </ul>	<ul style="list-style-type: none"> <li>a) The design external appearance of the minor modification or alteration;</li> <li>b) The external to used in the minor modification or alteration;</li> <li>c) Earthworks for the completion of any minor modification or alteration.</li> </ul>	<p>Objectives:</p> <p>3.3</p> <p>3.4</p> <p>Policies:</p> <p>3.3.1</p> <p>3.3.2</p> <p>3.4.2</p> <p>3.4.4</p>
<p><b>Rule: 7.2.1.2</b></p>	<p>The external minor modifications or alterations of any category heritage building or structure in the Wharetawhito Heritage Policy Area that does not comply with the requirements, conditions and permissions in rule 7.2.1.1 is</p>		



	a discretionary activity.
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**Restricted Discretionary Activity Rule: Example 1**

**Restricted Discretionary Activities**

**12.2.3.1 Restricted Discretionary Activities**

The following are restricted discretionary activities in the Residential A zone provided they comply with the requirements, conditions and permissions set out in rule 12.2.3.2.

- a. Activities in the Residential A zones that are not described as controlled, non-complying or prohibited, and that fail to comply with the permitted activity requirements for height and separation distances in rules 12.1.1.2 to 12.1.1.9.
- b. Home-based businesses employing more than two people at any site or in any building on that site.
- c. ...

**Restricted discretionary requirements, conditions and permissions**

**12.2.3.2 Height and Separation**

- 1.
  - a. The maximum height of any building or structure under 12.2.3.1(a) shall not exceed 15 metres.
  - b. The footprint area of encroachment within any of the yards specified 12.2.12(b) shall not exceed more than 5 square metres, and no combination of structures on the site shall have an aggregate length of more than 5 metres along any one boundary.

**Matters of discretion**

**12.2.3.3 Matters of Discretion**

The matters over which Council will retain discretion are:

- a. The actual or potential adverse effects created by an increase in height over 10 metres.
- b. The actual or potential adverse effects created by a reduction in separation distances.
- c. ...

**Discretionary Activity Rule: Example 1**

**Discretionary Activities**

**12.3.4.1 Unrestricted Discretionary Activities**



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The following are Discretionary Activities in the Residential A zone:

- a. Commercial activities other than home-based businesses.
- b. Any other activity that is not described as permitted, controlled, restricted discretionary or non-complying.

### **Non-complying Activity Rules: Example 1**

#### **Non-complying Activities**

##### **12.3.4.1 Non-complying Activities**

The following are non-Complying activities in the Residential A zone:

1. Buildings over 15 metres in height;
2. Habitable or occupied buildings within the inner noise boundary of Whatamatu International Airport as shown in maps B12 and B14 of this plan;
3. ...

### **Prohibited Activity Rules: Example 1**

#### **12.6.5.1 Prohibited Activities**

New buildings and permanent structures, other than those required for maritime navigation or approved erosion control works, are prohibited in the Horopari Extreme Risk Hazard Area shown on planning maps HA3 and HA4.

**Note:** No resource consent can be granted for a prohibited activity.

### **Example Rules for Notification Non-notification of Applications: Example 1**

#### **Rule 12.6.5.9: Controlled Activities**

- a. Trimming work on any notable tree listed in schedule 6 of this plan is a controlled activity, provided that the following terms and conditions are complied with:
  - i. An arborist's report shall be obtained and complied with for any trimming work that requires the removal of branches with a diameter of more than 40mm; and
  - ii. All trimming cuts shall be immediately sealed against infection, using a sealant that will not be harmful to the tree.
- b. **Applications for activities that comply with 12.6.5.9(a) will not be notified.**

### **Rules for Notification and Non-notification of Applications: Example 2**

#### **Rule 14.6.5.4s Non-notification**

Consent applications made under 14.6.5.3 will not be notified or limited notified.

## Example Regional Plan rules

The following examples are hypothetical representations of rules written in accordance with best practice guidelines. While not shown here, cross-references to policies and objectives would be appropriate.

An alternative to listing activities under each activity class is to tabulate them. Some plans existing plans take this concept further by having all the rules written up as a table.

Note that italics are used to denote terms that would be included in the definitions section of the district plan.

### Tables

A table that outlines rules is useful for two reasons. First, it can be used as a drafting tool to test the thresholds for rules. It provides an effective way of checking rules that overlap or repeat, and finding gaps. It also lets practitioners review the cumulative effect of all the rules applicable (eg for activity consent status).

Second, tables can be used to confirm which rules apply in different parts of the district/region and for which activities.

### Permitted Activity Rules: Example 1

#### Permitted activities

##### 6.7.3.4 Permitted Activities

The following activities are permitted in the Whatamatu Water Management Area provided that they comply with the requirements, conditions and permissions in 6.7.3.5:

- a. Minor diversions of water in natural watercourses.
- b. Diversions of water in artificial watercourses.

#### Requirements, conditions and permissions

##### 6.7.3.5 Diversions in the Whatamatu Water Management Area

- a. One or more of the following must apply:
  - i. The catchment area above the diversion does not exceed more than 30 hectares in area; or
  - ii. The diversion remains within the channel of the affected watercourse; or
  - iii. The diversion shall not divert more than 10% of the flow of the affected watercourse, and the water diverted is returned to the affected watercourse or water body within 150 metres downstream of the diversion.



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- b. The diversion shall not alter the water levels of any wetland or result in contaminants, other than water or sediments, entering a wetland.
- c. The diversion shall not result in contaminants, other than water or sediments, entering a river or lake.
- d. The release of sediments shall not cause any conspicuous change in BOD, colour or clarity of water after reasonable mixing.
- e. The diversion shall provide for existing fish migration in the affected water body to continue.
- f. The diversion shall not reduce the quality or quantity of water available for an existing lawfully established take.

**Permitted Activity Rules: Example 2**

<b>Activity</b>	<b>Requirements, conditions and permissions to be complied with</b>	<b>Non-compliance</b>	<b>Applicable objectives and policies</b>
<p><b>Rule 9.1.1.1</b></p> <p>The following activities are permitted in the Poraone Catchment:</p> <p>(1) Restoration, alteration, replacement and maintenance of lawfully established bores or water takes;</p> <p>(2) Closure, decommissioning or abandonment of bores...</p>	<p>(a) Any replacement or altered bore shall take water from the same aquifer as the existing bore;</p> <p>(b) The replacement bore shall be located on same site and within 5 metres of the bore to be replaced;</p> <p>(c)...</p>	<p>Activities that fail to comply with requirements, conditions and permissions of rule 9.1.1.1 shall be Restricted Discretionary</p>	<p><b>Objectives:</b></p> <p>9.1</p> <p>9.2</p> <p><b>Policies:</b></p> <p>9.1.1</p> <p>9.1.2</p> <p>9.1.5</p> <p>9.2.3</p>



## Controlled Activity Rules: Example 1

### Controlled activities

#### 6.8.2.1 Controlled Activities

The following are Controlled Activities throughout the Whatamatu Water Management Area provided that they comply with the requirements, conditions and permissions set out in rule 6.8.2.2:

- a. The taking and use of surface water for stock watering.
- b. The taking and use of surface water for small-scale horticultural uses.

### Controlled activity requirements, conditions and permissions

#### 6.8.2.2: Water for stock watering

- a. The rate of abstraction for any one property described in a single certificate of title shall not exceed an average 2.0 litres per second, or exceed a maximum rate of 5 litres per second for a total period of more than 30 minutes per day.
- b. The combined quantity of all takes within the total catchment shall not exceed 40 litres per second.

#### 6.8.2.3 Small-scale Horticultural Uses

(a) ...

### Matters of control

#### 6.8.2.4 Matters of control

In respect of 6.8.2.1(a) and (b), the matters over which the Erehwon Regional Council retains control are:

- a. The volume and the rate of water abstraction.
- b. The duration over which the water is to be taken.
- c. The effects of reduced flows on surface water bodies during summer low-flow periods.



## **Restricted Discretionary Activity Rules: Example 1**

### **Restricted Discretionary Activities**

#### **6.8.3.1 Restricted Discretionary Activities**

The diversion of water in, or from, any watercourse in the Erewhon Region is a restricted discretionary activity if one or more of the following apply:

- a. The proportion of the flow to be diverted in, or from, the water course affected is greater than 10% but less than 25% and is returned to the watercourse or water body within 150 metres downstream of the diversion.
- b. The diversion will result in the alteration of water levels in any wetland or the discharge of contaminants other than water, sediment or chemicals listed in schedule 5 of this plan.
- c. The diversion will result in contaminants, other than water, sediments or chemicals listed in schedule 5 of this plan entering a river or lake.

#### **6.8.3.2: Matters of Discretion**

The matters to which the Erewhon Regional Council restricts its discretion are:

- a. The volume and rate of water diverted;
- b. The length of time over which water may be diverted;
- c. The adverse effects associated with the alteration of water level in any affected wetland, including those on flora and fauna;
- d. The adverse effects associated with the discharge of any contaminant, other than water, sediment or chemicals listed in schedule 5 of this plan into the affected water course or water body.

## **Discretionary Activity Rules: Example 1**

### **6.8.4.1 Discretionary Activities**

Any activity that is not described as permitted, controlled, restricted discretionary, non-complying or prohibited in the Whatamatu Water Management Area is a discretionary activity.



## Discretionary Activity Rules: Example 2

### 7.4.1.1 Discretionary Activities

The following are Discretionary Activities in the Tahatai Coastal Management Area:

- a. Any activity involving the removal of more than 40,000 cubic metres of sand, shell, shingle or gravel within a consecutive 12-month period;
- b. The introduction or planting of an exotic plant species not already present in the Tahatai Coastal Management Area;
- c. ...

## Non-complying Activity Rules: Example 1

### 6.8.5.1 Non-complying Activities

The drainage or partial drainage of any regionally significant wetland described in schedule 3 of this plan is a non-complying activity.

## Examples of definition styles

Definitions are generally written in one of four ways:

1. delimiting definitions - clarify the boundaries between similar terms or terms with several possible meanings
2. extending definitions - add to the common meaning of a term through including extra information or examples. They are usually distinguishable by the use of the word 'includes'
3. restricting definitions - remove some element from the common meaning of a term or are used to explain shorthand or abbreviated terms
4. referencing definitions - refer to definitions provided in statutes or technical documents. Note that as an alternative, referencing definitions could be put in a glossary that is separate, but adjacent to, the definitions chapter of a plan.

Being aware of the four types of definitions can assist in their drafting and in understanding the effect they may have in any given circumstance. However there is no obligation to use all four definition types, nor do any need to explicitly identify to the reader the type of definition being used.

## Examples of 'delimiting' definitions

Coastal Marine Area: means the foreshore, seabed, and coastal water, and the air space above the water:

- a. of which the seaward boundary is the outer limits of the territorial sea;
- b. of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of:
  - i. one kilometre upstream of the mouth of the river; or



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- ii. the point upstream that is calculated by multiplying the width of the river mouth by five.

Day means between the hours of 7.00am and 10.00pm.

Services: means the range of capital works and facilities provided by the council, being:

- i. roading;
- ii. footpaths;
- iii. street lighting;
- iv. wastewater disposal;
- v. solid waste disposal;
- vi. stormwater disposal;
- vii. reserves and sports grounds; and
- viii. libraries and cultural facilities.

### **Examples of 'extending' definitions**

Fish: means all species of fish including;

- a. all species of finfish at all stages of their life cycle; and
- b. all crustacean, shellfish, sponges and echinoderms at all stages of their life cycle

Restaurant: refers to a place where food is served to paying customers for commercial gain and includes:

- i. cafes;
- ii. bars serving food;
- iii. takeaway premises with provision for customers to eat on-site;
- iv. food stalls that provide seating for customers; and
- v. boats, vehicle, or aircraft that are immobilised and converted as a place to serve food to customers who eat on-site.

Wind Farm: means turbines or other mechanical devices used to obtain or derive energy from the wind, including the pylons or towers that support turbines or other devices, ancillary buildings, and the land on which they are located.

### **Examples of 'restricting' definitions**

Council: means the Kaitaki Lakes Regional Council

Earthworks: means excavation, re-contouring or filling of land but does not include turning of soil, tilling, or ploughing.

Water: means water in all its physical forms whether flowing or not and whether over or under ground but does not include water in any form while in any pipe, tank or cistern.



THE RMA QUALITY PLANNING RESOURCE

**Examples of 'referencing' definitions**

Ecosystem: has the same meaning as contained in section 2 of the Environment Act 1986.

Tawhito Policy Area: means the area shown in planning maps H3 to H5 (inclusive) that is subject to development restrictions set out in chapter 9 of this plan.

Taonga Species: are species of birds, plants, and animals with which Ngai Tahu have a recognised spiritual, historic, and traditional association as defined in section 287 of the Ngai Tahu Claims Settlement Act 1998.

Note: As an alternative to having referencing definitions in the plan chapter on definitions, these terms could be placed in a glossary that is separate, but adjacent to, the definitions chapter.

