
under: the Resource Management Act 1991

In the matter of: Hearings on Submissions on the Proposed One Plan

between: Fonterra Co-operative Group Limited

Submitter

and: Horizons Regional Council

Respondent

Statement of evidence of Nathan Neill Baker on behalf of
Fonterra Co-operative Group Limited

Dated: 17 June 2008

Date of Hearing: 2 July 2008

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STATEMENT OF EVIDENCE OF NATHAN NEILL BAKER

INTRODUCTION

- 1 My full name is Nathan Neill Baker. I appear on behalf of Fonterra Co-operative Group Ltd (*Fonterra*).
- 2 I am a Senior Resource Management Consultant for Tonkin & Taylor Ltd in its Wellington Office. I am a full member of the New Zealand Planning Institute. I hold a Master of Environmental Science degree from the University of Otago. I have 8 years experience in New Zealand and the United Kingdom in the profession of planning. I have worked for both local government and private consultancy firms.
- 3 As part of my role at Tonkin & Taylor Ltd, I regularly make submissions on a wide variety of proposed District and Regional Plans and other policy initiatives, for a number of clients. Recent examples include:
 - Hawke's Bay Regional Coastal Environment Plan (ONTRACK)
 - Waste Minimisation (Solids) Bill (Housing New Zealand Corp)
 - Wellington City Plan Change 48: Central Area Review (Housing New Zealand Corp)
 - Wellington City Plan Change 56: Managing Infill Housing (Housing New Zealand Corp).
- 4 I am familiar with the Proposed Horizons One Plan (*Proposed One Plan*) to which these proceedings relate.
- 5 I have read and agree to comply with the Code of Conduct for Expert Witnesses in the Environment Court. Except where I state that I am relying upon the specified evidence of another person, my evidence in this statement is within my area of expertise.

- 6 I have endeavoured to be accurate and to cover all relevant matters relating to the topic on which I am giving evidence. I am not aware of any matters which might alter or detract from my conclusions which I have not included.
- 7 The assumptions on which my evidence is based are not, in my view, unlikely or unreasonable.

SCOPE OF EVIDENCE

- 8 My evidence will address:
- 8.1 The role that Section 32 (*s32*) of the Resource Management Act (*RMA* or *the Act*) plays in the plan-making process under the Act;
 - 8.2 Section 32 requirements;
 - 8.3 Approach of Horizons Regional Council (*Horizons*) to s32 analysis in preparation of Proposed One Plan;
 - 8.4 Potential consequences of an inadequate s32 evaluation; and
 - 8.5 Suggested way forward.

SUMMARY

- 9 Section 32 establishes a process to determine the most appropriate means to achieve the purpose of the Act. It is a particularly important process when preparing a new plan of the magnitude of the Proposed One Plan.
- 10 I consider that the s32 analysis leading up to the Proposed One Plan falls well short of fulfilling the role and requirements of s32. Horizons appears not to have engaged in a rigorous cost-benefit analysis of competing options (especially in the area of water quality and water quantity) prior to notification of the Proposed One Plan.

- 11 The inadequacies of the s32 analysis have led to proposed rules and policies that may not be the most appropriate way to achieve the purpose of the Act. It has also led to an inability of potentially affected parties to assess the implications of the Proposed One Plan.
- 12 I do not consider it to be consistent with s32 (not to mention good decision-making) to try to arrive at the most appropriate rules and policies through the hearings process, as I consider that the first instance weighing of competing options should occur prior to notification. It would likely impose a heavy burden on the Commissioners if they were required to conduct a thorough cost-benefit analysis of competing options during the hearings themselves.
- 13 Therefore, I consider that the best way forward is to identify fundamental issues in contention, and require a thorough cost-benefit analysis of competing options to address these issues. I understand that the contentious issues from Fonterra's perspective relate to water quality and water quantity.
- 14 If the most appropriate option is different than the proposed policies and rules, a variation to the Proposed One Plan may be initiated.

THE ROLE OF S32 IN THE PLAN-MAKING PROCESS

Importance of Thorough s32 Analysis

- 15 Section 32 serves a critical role in the plan-making process. It is a key duty under the Act of any Council when preparing a new policy statement, new plan or a plan change.
- 16 It is a particularly important process to get right when preparing a new plan of the magnitude of the Proposed One Plan. As a general rule, the rigour applied to a s32 analysis should reflect the significance of what is being proposed. For example, a minor plan change to vary a zone boundary may be expected to have a relatively succinct s32 analysis and report. On the other hand, a

new plan of the importance of the Proposed One Plan would be expected to have a comprehensive and rigorous s32 analysis and report.

- 17 I consider the depth of required analysis to be influenced by:
 - 17.1 The importance of the resource management issue in relation to the purpose of the Act;
 - 17.2 The complexity of the issue being addressed;
 - 17.3 The significance of the economic and social effects that the means of implementation will have on resource users, the council and the wider community; and
 - 17.4 The degree to which the proposed approach departs from existing plan provisions that are accepted by the community.
- 18 In my opinion, the greater the likely economic and social effects, the more in-depth the analysis needs to be. This is because methods that impose a high social and economic cost are unlikely to be accepted by the community unless the environmental benefits are very clearly explained and justified and the public is convinced that the proposed approach is the most efficient means to achieve these benefits.¹
- 19 In addition, the greater the scale of change from the status quo, the more in-depth the analysis of alternatives needs to be. This

¹ See Section 32 Guidance Note, <http://www.qp.org.nz/plan-development/implementation.php#value> (Section 32 Guidance Note) (attached as **Appendix A**) at page 10 ("As a general rule, high economic and social costs will require in-depth analysis of the method's efficiency. The community will expect a clear explanation of the method's environmental benefits. The depth of analysis required will also be influenced by the issue's importance, complexity, and degree of 'newness'.")

is particularly true for prescriptive plan provisions that often have social and economic effects that are more significant than those associated with less prescriptive plan provisions.

- 20 The Proposed One Plan (especially with respect to water quality and water quantity) represents a significant change from the status quo with social and economic effects that may be significant. In my opinion, a thorough s32 analysis of the Proposed One Plan is necessary.

Relationship Between s32 and Good Regulatory Practice

- 21 I have reviewed the evidence of Dr Layton. Dr Layton addresses the requirements of good regulatory practice, and advances the *Code of Good Regulatory Practice* as a useful guideline to achieve good practice. Dr Layton states that the *Code of Good Regulatory Practice* is relevant in the development of regional plans, and offers reasons for holding that view.²

- 22 I have reviewed the *Code of Good Regulatory Practice*, and I share Dr Layton's view as to its relevance in the plan-making process. I consider that the concept of good regulatory practice as well as the principles to achieve it (efficiency, effectiveness, transparency, clarity, and equity) are relevant in the development of plans. I note that efficiency and effectiveness (two of the principles most relied upon by Dr Layton) are expressly referenced in s32(3)(b) of the RMA.

- 23 With respect to the other principles (transparency, clarity, and equity), I make the following comments:

² See Statement of Evidence of Thomas Brent Layton at para 17.

- 23.1 Transparency. As explained below, the Ministry for the Environment Guidance Note on s32 emphasises the importance of transparency in the s32 process;³
- 23.2 Clarity. To encourage comprehension (as well as encourage compliance) by potentially affected parties, regional plans should be clear and avoid ambiguity; and
- 23.3 Equity. Aside from matters in which the RMA requires particular consideration (eg sections 6, 7, and 8), I agree with Dr Layton that the RMA should strive to achieve equitable results.⁴

SECTION 32 REQUIREMENTS

Section 32 Statutory Requirements

- 24 Section 32 establishes a two-step process as follows:
- 24.1 An evaluation must be carried out before a proposed plan is notified (32(1)); and
- 24.2 A further evaluation must also be made before making a decision under clause 10 or clause 29(4) of Schedule 1(32(2)).
- 25 Under both steps, the statutory requirements of the evaluation under s32 are as follows:
- (3) *An evaluation must examine:*
- (a) *The extent to which each objective is the most appropriate way to achieve the purpose of this Act; and*

³ Section 32 Guidance Note at page 3.

⁴ See Statement of Evidence of Thomas Brent Layton at footnote 3.

(b) *Whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.*

(4) *An evaluation must take into account:*

(a) *The benefits and costs of policies, rules, or other methods; and*

(b) *The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.*

(5) *The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.⁵*

26 The Environment Court outlined the relevant requirements for plans in *Eldamos Investments Limited v Gisborne District Council* as follows:

1. *The objectives of the Plan are to be evaluated by the extent to which they:*
 - a. *Are the most appropriate way to achieve the purpose of the RMA; and*
 - b. *Assist the council to carry out its functions in order to achieve the purpose of the RMA; and*
 - c. *Are in accordance with the provisions of part 2 of the RMA.*

⁵ RMA, s32.

2. *The policies, rules, or other methods in the Plan are to be evaluated by the extent to which they:*
 - a. *Are the most appropriate way to achieve the objectives of the Plan; and*
 - b. *Assist the council to carry out its functions in order to achieve the purpose of the RMA; and*
 - c. *Are in accordance with the provisions of part 2 of the RMA; and*
 - d. *(If a rule) achieve the objectives and policies of the Plan.*⁶

27 I consider that the *Eldamos* test highlights the importance of s32 in evaluating plan provisions.

Section 32 Guidance Note

28 A Guidance Note has been prepared to guide implementation of the statutory requirements. According to the Guidance Note, "to assist in determining whether the option (whether a policy, rule or other method) is appropriate, the **effectiveness** and **efficiency** of the option should be considered".⁷

29 The Guidance Note defines the terms "effectiveness" and "efficiency" as follows:

29.1 **Effectiveness** means how successful a particular option is in addressing the issues in terms of achieving the desired environmental outcome; and

29.2 **Efficiency** means the measuring by comparison of the benefits to costs (environmental benefits minus

⁶ See *Eldamos Investments Limited v Gisborne District Council* (EnvC, W047/05, 22 May 2005, Judge Sheppard).

⁷ Section 32 Guidance Note at page 2.

environmental costs compared to social and economic costs minus their benefits).⁸

- 30 The Guidance Note lists the process that councils must follow under s32 as follows:
 - 30.1 Determine the environmental issue;
 - 30.2 Evaluate the extent to which any new objective is the most appropriate way to achieve the purpose of the Act;
 - 30.3 Evaluate whether the policies, rules, or other methods are the most appropriate for achieving the objective;
 - 30.4 Explore different methods/ways of dealing with the issue;
 - 30.5 Evaluate the benefits and costs of the proposed policies, rules, or other methods;
 - 30.6 Examine the risk of acting or not acting if there is uncertain or insufficient information on the policies, rules, or other methods;
 - 30.7 Evaluate a rule that imposes a greater prohibition or restriction on an activity to which a national environmental standard applies a lesser prohibition or restriction;
 - 30.8 Decide which method or methods is the most appropriate to achieve the purpose of the RMA; and
 - 30.9 Carry out the evaluation prior to the provisions being adopted and summarise the evaluation in a report.⁹

⁸ As Dr Layton explains, effectiveness and efficiency are principles that underpin good regulatory practice. See Statement of Evidence of Thomas Brent Layton at paras 22 to 33.

31 The Guidance Note emphasises that:

Using s32 is a duty, not an option. Councils must apply s32 to new plans, plan changes and variations, plan reviews, and policy statements.¹⁰

32 The Guidance Note explains the value of the s32 analysis as follows:

One of the stages of the s32 process requires a rigorous assessment of environmental, social, and economic benefits and costs. This analysis must be transparent and well documented, with all assumptions and decisions justified. This helps ensure that:

- *Good environmental outcomes are achieved, at the lowest practicable cost to individuals and the community*
- *Plan provisions are targeted at achieving the purpose of the RMA by the most appropriate methods*
- *Councillors (as decision makers) have sound policy analysis on which to base their decisions about resource management issues*
- *A sound basis is provided for re-assessing whether the chosen provisions are necessary and appropriate once they are in use and the environmental outcomes become apparent.¹¹*

⁹ Section 32 Guidance Note at page 3.

¹⁰ Ibid.

¹¹ Ibid (emphasis added).

33 Finally, the Guidance Note states that:

*Before deciding to notify proposed provisions, councils must be satisfied that the requirements of s32 have been met.*¹²

Obligations under Step One and Step Two

34 As the foregoing requirements illustrate, an evaluation is required as to the costs and benefits of policies, rules, and other methods to ensure that they are the most appropriate way to achieve the objectives and consequently the purpose of the Act.

35 Section 32 is an iterative process that requires review between Steps One and Two. However, the evaluation of appropriateness, benefits, costs and risks must be undertaken at both Steps One and Two – that is, prior to notification and prior to making a decision. The level of scrutiny that is to be applied to each s32 analysis is the same for Steps One and Two.

Relationship Between Step One and Step Two

36 The aim of s32 is to ensure decisions on how to address resource management issues are supported by good policy analysis. The analysis undertaken prior to notification (Step One) sets the tone for the rest of the decision-making process. Good policy analysis at the start, allows the community to make meaningful and informed submissions and allows Commissioners to give proper and informed consideration to those submissions. Good analysis in the beginning means a council has a sound basis for its case resulting in better informed decision making.

37 In my opinion, it is critical to engage in a thorough cost-benefit analysis of competing options during Step One. I do not consider it to be consistent with the purpose of s32 to publicly notify provisions that have not been robustly tested with a view

¹² Ibid at page 12.

to conducting a cost-benefit analysis of competing options at the hearings. In my view, such an approach would be tantamount to skipping Step One and relying exclusively on Step Two.

- 38 Rather, s32 requires an iterative 'double-checking' process where proposed approaches are tested prior to public notification and then double-checked prior to the decision being made. This iterative process allows for submissions and evidence at the hearing (Step Two) to be reviewed against the initial cost-benefit analysis conducted at Step One.

Shortcomings of Step One

- 39 A s32 analysis and report prior to notification should be sufficient to enable the sound justification of the chosen means to achieve the purpose of the Act in comparison to the other means considered.
- 40 I would expect to be able to review the s32 Report and find the answer as to why a particular provision is in the Proposed One Plan. I would also expect to find answers to the following questions:
- 40.1 What are the costs and benefits?
- 40.2 Do the benefits outweigh the costs?
- 40.3 How do the costs and benefits compare to another approach?
- 40.4 Does the particular provision help meet the purpose of the Act?
- 40.5 What is the risk of acting or not acting?
- 41 In terms of water quality and quantity provisions, I would expect to be able to review the s32 Report and answer the following questions:

- 41.1 How do the anticipated environmental results from the implications of Rule 13-1 compare to the costs of agricultural operations operating under non-regulatory whole-farm business plans?
 - 41.2 What are the costs and practical consequences for the future availability of water for agricultural irrigation of the exemption in Policy 6-16 of takes for hydro electricity generation?
 - 41.3 What are the costs to achieve the water quality standards set out in Schedule D?
- 42 Unfortunately, it is impossible to adequately answer any of these questions based upon the s32 Report for the Proposed One Plan.

HORIZONS' APPROACH

- 43 I have read the evidence of Helen Marr and the Section 42A reports of John Maassen and Phillip Percy in response to submitters' concerns regarding the s32 Report. Their overall response appears to be that the s32 analysis and report prepared to support the Proposed One Plan meets the requirements of s32 and that the Act provides no yardstick for what a sufficient analysis or report is.
- 44 I consider that the Guidance Note on s32 provides a good measure of what s32 requires, and in my opinion, the approach taken by Horizons does not satisfy the s32 requirements.
- 45 Of particular concern is Horizons' reliance on undertaking the necessary cost-benefit analysis at Step Two rather than Step One. In my opinion, this over-reliance on Step Two is not what is prescribed under s32 and does not represent good regulatory practice.
- 46 In her Officer's Report on the Overall Plan, Ms Marr states:

"if there is merit in assessing the economic benefits and costs of particular policies then this will be done. ... We intend to do this with key parts of the [Proposed One Plan] and present this information in the topic hearings so it can be seen in its context."¹³

47 In my opinion, failing to undertake a cost-benefit analysis prior to notification is inconsistent with s32, which expressly requires an analysis of *"the benefits and costs of policies, rules, or other methods"* prior to notification.¹⁴

48 In his section 42A Report, Mr Percy states that:

"Despite making it explicit that Horizons has to evaluate whether the provisions in the Proposed One Plan will contribute to achieving the purpose of the Act, s32 only provides a basic prescription of what the evaluation should entail. It does not prescribe when the evaluation should occur other than that the first part of the evaluation should have been done before the Proposed One Plan was publicly notified (s32(1)). The evaluation could therefore have occurred as a concerted event near the end of the development phase of the Proposed One Plan or it could have been an iterative activity that occurred throughout the plan development process."¹⁵

49 Mr Percy further states that:

Horizons might think of the s32 process in this way:

¹³ Planning Evidence and Recommendations Report at page 57 (emphasis added).

¹⁴ RMA, s32.

¹⁵ Section 42A Report of Phillip Percy at para 21.

*"We, as the council responsible for preparing this planning document, have thought about these things, have considered these points, and have been informed by this information (a summary of this have been provided to you in a report). We have made a proposal based on our subsequent conclusions reached after evaluating that information. If you, as a potential submitter, do not agree with the proposal we have put forward, provide us with an alternative and with reasons to show that your suggested alternative is better than what we've put forward. In making our decision on the planning document, we will evaluate it again, taking into account your proposal. If your alternative achieves the desired outcomes in a better way, we will adopt it."*¹⁶

50 Mr Percy's comments appear contrary to the purpose of s32:

50.1 How could a regional council develop the most appropriate approach if it did not evaluate potential options until "a concerted event near the end of the development phase"?

50.2 Where in Mr's Percy's summary is a consideration of alternatives, which is a key aspect of s32?

50.3 Where in his summary is an evaluation of the reasons for the proposed approach, which is expressly required under s32?

51 In my opinion, to publicly notify objectives, policies, rules and other methods without conducting a rigorous evaluation of their costs and benefits relative to other options is not consistent with s32. Section 32 requires more than post-hoc rationalisation of pre-determined policies.

¹⁶ Ibid at paras 37 and 38.

CONSEQUENCES OF AN INADEQUATE S32 ANALYSIS

- 52 As Dr Layton will explain, there are serious consequences of the inadequate evaluation of the proposed rules and policies under the Proposed One Plan.
- 53 I agree with Dr Layton that the inadequacies of the s32 analysis have led to failures to identify the most appropriate rules and policies, especially with regard to:
- 53.1 Methods to address agricultural operations, including nitrogen leaching into waterways;
 - 53.2 Competition among potential water users, especially with respect to hydro-electric power generation; and
 - 53.3 Achievability of water quality standards.
- 54 Failing to undertake an adequate s32 analysis prior to notification may lead to poor decision-making. The community is unable to make informed and focussed submissions on the environmental, social and economic costs and benefits of the Proposed One Plan without a rigorous s32 analysis. The number of submitters (in excess of forty) raising concerns about the adequacy of the cost-benefit analysis illustrates this problem.¹⁷
- 55 Without the benefit of a thorough s32 analysis and focussed submissions, the hearing process will be strained as submitters, council staff and Commissioners try to play 'catch up' on the s32 analysis.

¹⁷ See Planning Evidence and Recommendations Report at section 4.4 (summarising submissions raising concerns with the adequacy of the cost benefit analysis prior to notification).

WAY FORWARD

- 56 Both Ms Marr and Mr Percy are of the opinion that a robust cost-benefit analysis can be undertaken at the hearings on plan topics, prior to the decision being made.
- 57 I consider the approach suggested by my colleague Dr Layton to be more appropriate: to proceed as currently planned for some issues, specifically those that are unlikely to be contentious, but go back and re-evaluate the approach to the more contentious issues to conform to the requirements of s32 and the standards of good regulatory practice.
- 58 Once a rigorous evaluation of costs and benefits has been undertaken, Horizons and potentially affected parties will be better informed of the implications of the Proposed One Plan. If options that are more appropriate than the proposed policies and rules emerge during the evaluation, a variation to the Proposed One Plan may be initiated.
- 59 I share Dr Layton's view that the hearings and appeals process is not the right way to assess competing options to arrive at the best approach. The rigour and type of evaluation that is required to properly evaluate these matters under s32 is complex, and the Commissioners can not be expected to undertake that type of evaluation at the hearing.
- 60 It is far better to evaluate competing options prior to notification.

Nathan Baker
17 June 2008

APPENDIX A: SECTION 32 GUIDANCE NOTE

Section 32 - Methods of implementation

Abstract

The main task of councils under the Resource Management Act 1991 (RMA) is to decide how to address environmental issues. In preparing plans and changes to them, section 32 of the RMA requires councils to consider the alternative ways to achieve the environmental outcomes being sought. Essentially, s32 tests to determine the most appropriate means, and the appropriateness of any selected methods. It assists in reasoning why changes are needed and formalises a process for working out how best to deal with environmental issues. This may be through a variety of alternatives of which rules may be just one option.

The requirements of s32 for councils apply to the preparation of regional and district plans, plan changes, variations, policy statements and reviews. Following the amendment to the RMA in 2003, the requirements of s32 also apply to the person who has made a request for a private plan change. The s32 evaluation should result in the production of a s32 report to accompany the actual amendments or new provisions to be inserted in a plan or developed as a plan.

This guidance note provides a context for s32 analysis and suggests best practice techniques for implementation. Summaries of relevant case law and current challenges in s32 implementation are also available for your assistance.

[back to top](#)

Guidance note

- [The value of s32 analysis](#)
- [Meeting the requirements of s32](#)
- [The importance of consultation](#)
- [How to apply S32](#)
- [The section 32 evaluation process](#)
- [Managing the s32 process](#)
- [Applying s32 at notification](#)
- [Section 32 report](#)
- [Supplementary s32 report](#)
- [Applying s32 after submissions are received](#)
- [Applying s32 at a hearing](#)
- [Challenge to s32 process](#)
- [Monitoring](#)
- [Roles and responsibilities](#)

Section 32 of the RMA sets out a process for councils to test the

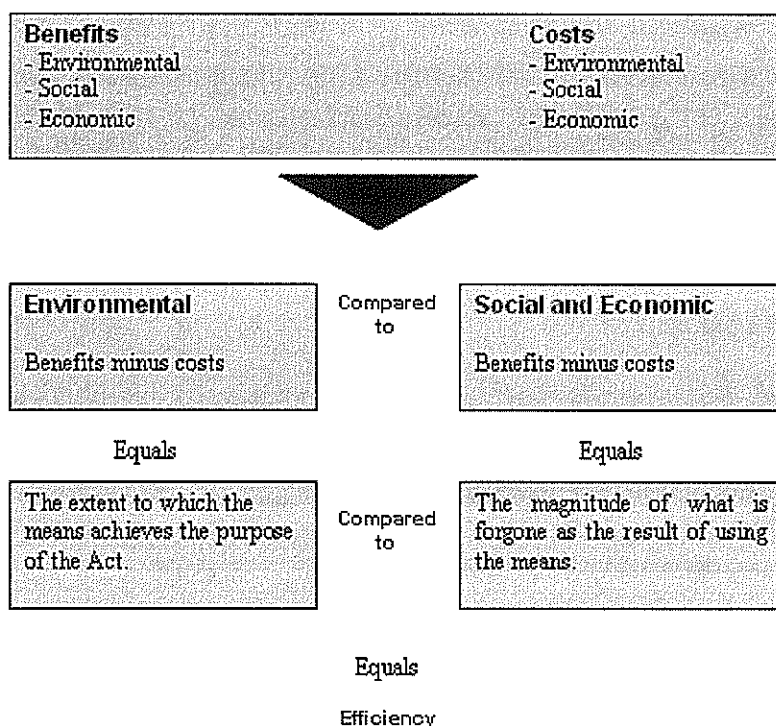
appropriateness of any proposed provisions for district and regional plans. It requires councils to consider a broad range of policies, objectives and methods, and to use a rigorous analysis of the benefits and costs in deciding which provisions are the most efficient. This guidance note is primarily intended for council staff, but those persons who are requesting a private plan change and need to prepare a s32 analysis would also find this guidance note of assistance. For more information on the preparation of a private plan changes, read the guidance note on private plan changes.

In the context of s32, this term means the following:

Appropriateness - means the suitability of any particular option in achieving the purpose of the RMA. To assist in determining whether the option (whether a policy, rule or other method) is appropriate the **effectiveness** and **efficiency** of the option should be considered:

- **Effectiveness** - means how successful a particular option is in addressing the issues in terms of achieving the desired environmental outcome.
- **Efficiency** - means the measuring by comparison of the benefits to costs (environmental benefits minus environmental costs compared to social and economic costs minus their benefits).

Figure: Deriving efficiency from benefits and costs



Rules in plans under the RMA is just one way that councils can achieve desired environmental goals. Sometimes methods other than RMA controls will also work. These may include methods such as voluntary agreements, use of by laws, and covenants. S32 explicitly requires councils to consider those other methods as well.

Councils must:

- Determine the environmental issue.
- Evaluate the extent to which any new objective is the most appropriate way to achieve the purpose of the Act.
- Evaluate whether the policies, rules, or other methods are the most appropriate for achieving the objective.
- Explore different methods/ways of dealing with the issue.
- Evaluate the benefits and costs of the proposed policies, rules, or other methods.
- Examine the risk of acting or not acting if there is uncertain or insufficient information on the policies, rules, or other methods.
- Evaluate a rule that imposes a greater prohibition or restriction on an activity to which a national environmental standard applies a lesser prohibition or restriction.
- Decide which method or methods is the most appropriate to achieve the purpose of the RMA.
- Carry out the evaluation prior to the provisions being adopted and summarise the evaluation in a report.

Using s32 is a duty, not an option. Councils must apply s32 to new plans, plan changes and variations, plan reviews, and policy statements. Those preparing a private plan change also must prepare a s32 report.

The value of s32 analysis

One of the stages of the s32 process requires a rigorous assessment of environmental, social, and economic benefits and costs. This analysis must be transparent and well documented, with all assumptions and decisions justified. This helps ensure that:

- Good environmental outcomes are achieved, at the lowest practicable cost to individuals and the community
- Plan provisions are targeted at achieving the purpose of the RMA by the most appropriate methods
- Councillors (as decision makers) have sound policy analysis on which to base their decisions about resource management issues
- A sound basis is provided for re-assessing whether the chosen provisions are necessary and appropriate once they are in use and the environmental outcomes become apparent.

Ideally, good practice in implementing section 32 results in less opposition to proposed provisions, and fewer opposing submissions and appeals to the Environment Court. For private plan changes, it may also improve the chances of the council adopting or approving a private plan change request.

The process of documenting s32 considerations can also help satisfy obligations under the Local Government Act 2002 (LGA). Acknowledging in a s32 that the council has turned its mind to the requirements at LGA s76 reduces scope for potential challenge under that Act. This scope for challenge arises from s23 of

RMA which does not remove the obligations for compliance with other legislation such as the LGA.

[back to top](#)

Meeting the requirements of s32

The application of s32 applies throughout plan preparation, from issue identification to decision release.

Council staff need to ensure that s32 requirements are met through the different stages of the process:

- When objectives are identified and assessed.
- When examining policies, rules, or other methods.
- After the draft plan or provision is prepared.
- When the decision is made to notify.
- In the officer's report on submissions.
- During deliberations by the council hearings committee. Prior to the final decision being released

The importance of consultation

Although not specifically required by section 32, good consultation is essential when identifying and assessing issues, objectives, policies, and methods, and after preparing the draft plan or provision. Consultation enables councils to gather information from and understand the needs of resource users. Consultation can also assist in the assessment process, testing a council's section 32 analysis against community views and aspirations. Ultimately, consultation should help establish a mandate for the final plan provisions. For more information on consultation, refer to the [consultation process guidance note](#).

- Decide when to do consultation and how best to do it.
- Consult early and consult widely.
- Raise key s32 questions, such as the benefits and costs of alternative methods, during consultation.
- Include a 'relevance to s32' section in the record of each consultation. For example annotate which part/s of the s32 record that each individual or group's comments/views relate to in a consultation database.
- Invite comment on draft plan provisions before notifying them, either through public or invited comment.
- Test the s32 analysis against the community feedback

[back to top](#)

How to apply S32

Like all good policy analysis, s32 follows an iterative process that requires a regular review of earlier steps and conclusions when necessary. It also follows a

sequential process, in the sense that it begins with issue identification and ends with the final decision. The 2005 RMA amendments to section 75 reduced the required contents of a district plan to objectives, policies, and rules. Although objectives are considered separately from policies or rules as part of best practice, this does not eliminate the need to view the process sequentially and review objectives following an evaluation of policies or rules.

Throughout the process, the following questions are equally relevant to each objective, policy, rules, or (if necessary) other methods:

Is there sufficient information on the subject matter? Is the information certain?

Is it appropriate? How will it achieve environmental objectives? Do the net benefits outweigh the net costs? Is one method better than others? Does it have community support? Is it effective? Will it actually do what it is intended and achieve the environmental outcome desired? Does it meet the purpose of the Act?

The section 32 evaluation process

1) Identify the resource management issue

An issue is a matter or subject that needs to be resolved. One of the key factors that a council must consider is identifying what the issue is. In considering a resource management issue the following questions should be considered:

- Is there evidence of unsustainable resource management or the risk of unsustainable resource management?
- Is the issue of significance to the district or region?
- Is addressing the issue likely to make difference?
- How can the issue be addressed?
- Is there enough information?
- How certain is the information?
- Is the issue already addressed by a National Environmental Standard?

2) Identify the objective

An objective states the outcome that would result from the resolution of the issue (such outcome may be long-term, and beyond the ten year life of the plan).

- Will it address the issue in a way that achieves the purpose of the RMA?
- What would happen without it?
- Does it relate directly to the issue, and address a significant aspect of the issue?
- Would achieving the objective make a substantial difference, in terms of resolving the issue?

3) Assess whether the objective is the most appropriate

An objective is a statement of a desired outcome and should be evaluated prior to the identification of policies, rules, or other methods. If later analysis shows that the costs of pursuing the objective are disproportionately large in relation to benefits, the appropriateness of the objective should be reviewed, and possibly be revised or discarded as part of the sequential process of the s32 analysis.

- In practice, a full evaluation of an objective requires a consideration of the policies and methods to achieve the objective.
- Use the checklist for issues, objectives, policies and methods as a tool for assessment and analysis.
- Review the issue and objective if the objective does not pass the test

4) Identify and evaluate policies

Policies relate directly to objectives. They are the broad action steps that address aspects of an objective. One objective can have several associated policies.

- Identify a range of feasible and practicable policies.
 - Will each policy achieve the objective in a way that is consistent with the purpose of the RMA?
 - What would happen without it?
- Ensure each policy supports achieving the objective.
- Reject policies that are not appropriate or could not realistically achieve the objective.
- Review the objective if no policy is appropriate or able to achieve the objective.

5) Identify and evaluate methods

S32 requires councils to examine, having regard to their efficiency and effectiveness, the methods (that may be within or outside the RMA) to achieve the stated objective.

Regulatory and non-regulatory methods to achieve each objective include: research, monitoring, education, information and training, council services, incentives, voluntary agreements, land purchase, levying charges, and rules.

- Be open-minded about the range of methods. While not explicitly required, consider all the alternatives to ensure that what ever the method is chosen, it is the most appropriate. The 2005 Amendment Act provides for the incorporation of documents by reference in plans and proposed plans (part 3 to Schedule 1 of the Act). Written material that is referred to in the plan or proposed plan has legal effect as part of that plan or proposed plan, and can only be removed or modified via a plan variation.
- Identify different types of methods, rather than approaches within each method, at this stage.
- Consider methods outside the RMA.
- Use the attached checklist to help identify methods.

- Consult to ensure all alternatives and risks are identified.

6) Assess the effectiveness of the selected method(s)

Following the amendment to the RMA in 2003, explicit consideration of alternative means is no longer required. In practice, to ensure that the most effective method is selected a degree of comparison of methods will be required. Focus on the selected method, but the evaluation must take into account the relative effectiveness of other methods.

- Ask if each method is effective. How well will it achieve the objective?
Consider:
 - The threat to the environment that is causing the issue.
Understanding the threat is fundamental to finding solutions.
 - The level of risk to the environment. A method with uncertain effectiveness may be worth keeping if the level of risk to the environment is high and vice versa (i.e., if the risk to the environment is low is the method worth pursuing?). Do note, however, that specific reasons must be given for imposing a rule that has a greater prohibition or restriction on an activity than a national environmental standard that prohibits or restricts the same activity.
 - The costs of the method, and who will bear them. A perception of high or unfair costs will reduce compliance and undermine the method's effectiveness.
 - How the method will be implemented, and whether the council has or can obtain the necessary resources
- Reject methods that are not appropriate or identify circumstances when not appropriate.
- Review the objective, policies, and methods if no method is necessary or appropriate.

7) Analyse the benefits and costs of the selected method(s)

Subsequent to the 2005 Amendment Act, a rule is the only method that is required in a district plan. Other methods may be used, but it is no longer mandatory to require them. The analysis of environmental, social, and economic benefits and costs of the proposed rule must be thorough and well documented. If other methods are employed, the associated benefits and costs should also be well analysed. The results will help determine the appropriateness of the selected rule/other method. Analyse different specific approaches available within each of the selected rule/other method, rather than the wider overall approach of each rule/other method. For example, zoning might be one of the type of rules first considered to address the effects of urban growth. If the assessment shows that the zoning rule is an appropriate and effective method, the cost/benefit analysis should focus on different zoning rule approaches.

Methods can be analysed in a package, if it is likely that a group of methods will be used to achieve one objective.

For each method or group of methods:

- Identify the environmental benefits. How will the method contribute to achieving the environmental outcome and the purpose of the RMA?
- Identify the environmental costs. How will the method run contrary to achieving the environmental outcome and the purpose of the RMA?
- Identify the social and economic costs to resource users, the council, and the community.
- Identify the social and economic benefits to resource users, the council, and the community.
- Clearly distinguish environmental benefits and costs from social and economic benefits and costs
- Identify who will bear the costs, and how costs will be apportioned.
- State all assumptions and uncertainties clearly. If there is uncertainty, state how critical it is, what has caused it, and what further information might reduce it.

How do we calculate and compare costs and benefits?

Environmental benefits and costs are often hard to quantify. They describe the way a method will affect things like life-supporting capacity, amenity values, landscape and heritage, and health and safety.

An example of an environmental benefit is: an increase in the amount of habitat saved for wading birds where there are threats to their survival. An example of an environmental cost is: the loss of nutrients available to indigenous fauna as a result of further marine farms.

- Consider each method's dependability, the time required for it to take effect, and its adaptability and flexibility.
- Try to estimate in financial terms what the monetary price of the environmental costs or benefits will be, and then compare them.
- Costs and benefits should relate only to those created by the method.

Social and economic costs have two dimensions: the total cost, and how much of the cost will be borne by each affected party. Resource users, councils, and the community or nation can all bear direct and indirect costs.

Social and economic costs can be difficult to separate, as one can have a direct bearing on the other. For example, one group in the community bearing most of the economic costs of a method could result in increased social costs and potential conflict.

An example of a social cost is the reduced recreational space in the coastal marine area from the development of marine farms.

An example of an economic cost is the financial loss to a marine farmer who may not be able to develop a new marine farm in a productive location due to rules that impose stringent standards.

- Assess costs on an individual basis if they fall unevenly on individuals.
- Estimate individual costs based on the number of properties affected if costs are shared.
- Always identify the cost to each individual, and the total of those individual costs.
- Count each cost once only. If you identify a cost for resource users, do not include it in council or community costs.
- Include costs that are flow-on effects. For example, a cost to a resource user of lost production might have the flow-on effect to the community of reduced economic activity.

Social and economic benefits in some cases can be directly related to beneficial environmental outcomes. For example, a method that protects significant landscapes and heritage might have benefits for tourism operators, and a method to improve land-use sustainability might result in increased farm productivity. Both these benefits might create additional flow-on economic benefits to the wider community.

An example of a social benefit is a rural community retaining its school and store as a result of increased population after more subdivision lots are permitted.

An example of an economic benefit is the financial gain to a farmer who is given the right to extract water for irrigation.

8) Establish the efficiency of each selected method(s)

The most efficient method will achieve the environmental outcome at the least overall cost.

Related methods can be assessed in a group, when whole plans or chapters of plans are being developed or reviewed.

For each method or group of methods:

- Subtract the environmental costs from the environmental benefits to establish the net environmental benefits.
- Subtract the social and economic benefits from the social and economic costs to establish the net social and economic costs.
- Compare the net environmental benefits with the net social and economic costs.

Net environmental benefits minus net social and economic costs equals efficiency.

This often involves comparing environmental benefits that are difficult to quantify with monetary costs. It can be useful to check that the value of the benefits is reasonable. Giving the benefits the same monetary value as the monetary costs could do this. You can then make an assessment as to whether the cost of the benefits is in fact relative to or too high or low in comparison to the costs. The need to do this will vary according to the importance of the

benefits to the community, and the method's importance in achieving the purpose of the RMA.

As a general rule, high economic and social costs will require in-depth analysis of the method's efficiency. The community will expect a clear explanation of the method's environmental benefits. The depth of analysis required will also be influenced by the issue's importance, complexity, and degree of 'newness.'

- Use the checklist for issues, objectives, policies and methods and the checklist of methods for achieving the purpose of the RMA as tools for assessment and analysis.

9) Identify the risks of acting or not acting

An evaluation of the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods needs to be clearly stated.

As with the approach for analysing benefits and costs, concentrate on the information relating to the selected methods, rather than the wider overall approach of each method. In some cases, there is no proof of cause and effect (particularly where there is significant risk to life-supporting capacity). This does not mean that the method should not be used, but it is necessary to document the risk of acting versus not acting in such situations. Ideally, the research and monitoring should indicate a preference on whether to act or not to act.

While every locality will require a different environmental response, other councils may have implemented similar methods and have built up a body of information that could assist in this evaluation. Monitoring data and feedback from operational staff will be a critical part of the evaluation. Document all references and source material.

For each method or group of methods:

- Clearly identify information sources for each of the methods. This will most likely include research from within the locality and research based on similar studies or environmental contexts.
- Identify where the methods have been tested and successfully put into practice.
- Use monitoring data to back up any evaluation.

For more information on monitoring, go to the [monitoring and reporting one-stop-shop](#).

10) Choose the appropriate method

Choosing the most appropriate methods(s) to achieve the objective requires an overall assessment of the methods efficiency and effectiveness.

- Create a matrix that records the effectiveness and efficiency of the method (s).
- If there were a number of methods that were identified early on in the process as being potentially suitable, a relative ranking of each method in effectiveness and efficiency can be used.
- Using rating scores from 1 to 10 or ratings of high, medium or low.

Choosing the appropriate method will be straightforward if:

- One method stands out as both highly efficient and highly effective, or
- All the methods get similar rankings except that one method gains a higher ranking in one particular area, for example there are higher environmental benefits.

In less straightforward cases, the right balance between effectiveness and efficiency will depend on:

- The significance of the desired environmental outcome.
- The level of risk.
- The amount of information available or its degree of uncertainty.
- The likelihood of the method achieving the desired results.

Effectiveness will have more weight than efficiency if the level of risk to the environment, due to failure, is high, if the method is uncertain, or if there is a lack of information. Efficiency will have more weight than effectiveness if the level of risk is low.

11) Review the objectives and policies

After the analysis of the methods benefits and costs:

- Return to the policies and review their appropriateness, using information gained from the analysis of methods.
- If required, review the policies that are no longer appropriate.
- Return to the objectives to ensure that they are the most appropriate way to achieve the purpose of the Act, using information gained from the analysis of methods.
- If required, review the objectives that are no longer appropriate.
- If objectives are revised then ensure the policies and methods still achieve the new objective.

[back to top](#)

Managing the s32 process

The s32 process must be managed so that it is coordinated with each stage of plan preparation. It is useful to think of a s32 analysis as a project that runs parallel and integral to plan preparation.

Appoint a s32 champion

A s32 champion is a senior council staff member who leads and monitors the s32 process. They should be rigorous in their thinking and could be from any discipline. They should ensure that:

- Financial and staff resources are available for the process
- Work loads are prioritised
- Councillors and senior managers are briefed regularly
- Outputs are achieved within budget and on time
- There is full and open communication among project team members.
- Ensures provisions are confirmed and drafted after the section 32 process.

Create a 'project brief'

A good project brief for the s32 process will:

- State the objectives, reflecting RMA requirements
- Identify key stakeholders and consultation requirements
- Identify who is responsible for specific tasks such as recording and managing information, carrying out the analysis and assessment of methods, and producing the s32 report
- Identify when checks must be made that s32 requirements have been met
- Identify the s32 'champion.'
- Scope the project first
- Treat the s32 process as a project that runs parallel with plan development.
- Establish the project brief and individual work briefs at an initial team meeting.
- Decide early what information will be recorded, and how.
- Use progress reports to ensure timeframes and objectives are met.

Applying s32 at notification

Before deciding to notify proposed provisions, councils must be satisfied that the requirements of s32 have been met.

The RMA also requires that a s32 record is publicly available at the time of notification.

[back to top](#)

Section 32 report

A comprehensive s32 record documents the process of s32 analysis from issue identification to notification. It provides a chronological record, states who was involved, summarises the evaluation and gives reasons for that evaluation. A council must formally adopt the s32 report before the report to which it relates is publicly notified.

A clear and thorough s32 record can encourage more focused submissions, and result in fewer challenges to the council decision. Where the report is provided

in support of private plan change, it might be effective in persuading the council to adopt or approve the private plan change. It provides a good record for the council which must undertake its own further s32 evaluation and assists later monitoring for the appropriateness. Ultimately, the report must answer the question: 'Why is this provision in the plan?'

The level of detail in a s32 report will depend on the level of analysis required through the process, and the level of community interest in the issue.

- Compile information throughout the s32 process.
- Create a specific set of s32 files and an identification system for documents.
- Make sure reasons for the information are included
- Make one person responsible for collecting and filing s32 information.
- Make one person responsible for keeping a diary of critical stages in the process.
- Make sure the report is available when provisions are notified.
- Include supporting documentation such as technical reports, discussion and policy papers, records of meetings and consultation, summaries of submissions, officers' reports, and council decisions and reasons.
- Produce the report in several volumes if many issues are involved.

Supplementary s32 report

The proposed plan provisions may change after a council hearing. This will require a supplementary s32 record or report that states:

- The changes made to the provisions
- The reasons for the changes
- The relevant documentation.

[back to top](#)

Applying s32 after submissions are received

To meet the requirements of s32, the officer's report on submissions must state whether the submissions:

- Contain any credible challenges to the provisions
- Suggest new policies and methods
- Provide additional information on the appropriateness of proposed provisions, including effectiveness.

The officer's report must also:

- Include a record of additional work done by the Council after submissions were received
- Provide reasons for recommended amendments to proposed plan provisions
- Explain why other submissions didn't lead to changes.

The council's written decisions on submissions must state the issues discussed, and cover the evaluation of alternatives.

Applying s32 at a hearing

The Council or Environment Court must satisfy itself that the most appropriate methods are being used, after having heard the evidence at the hearing. It is common practice for Councils to produce s32 material in relation to appeals on plans to the Court.

Challenge to s32 process

A submitter can only challenge the s32 process specifically under s32A(1) by submission.

[back to top](#)

Monitoring

The s32 analysis should provide information that will be useful for later monitoring - indeed s32 should assist in identifying requirements of the plan: what matters need to be monitored? In turn, the information and records gathered during monitoring should inform any future s32 analysis.

- Ensure the plan provisions are achieving the Anticipated Environmental Results (AERs).
- Review the objective, policies and methods if the AERs are not being achieved. Refer to the [policy and plan effectiveness monitoring](#) guidance note.

Roles and responsibilities

The persons responsible for making decisions on the plan provisions are responsible for ensuring that council duties under s32 are properly discharged. They must be satisfied that s32 requirements have been satisfied when they decide to notify, and when they decide on plan provisions. They are also responsible for ensuring that a s32 record is publicly available when provisions are notified.

Council staff are responsible for managing the s32 process, drafting provisions after consultation and analysis, providing information to decision makers, helping them understand s32, and giving quality policy advice.

- Run training or refresher courses for councillors to ensure they remain well informed about s32 requirements.
- Run joint councillor/staff workshops to deal with important matters such as identifying and assessing issues, objectives, policies, and methods.
- Ensure that councillors approve issues and objectives early, and remain well informed during the rest of analysis.

[back to top](#)

Best practice examples

Following the amendment to the Act in August 2003, there are different requirements to s32. The following examples that were prepared pre August 2003 still illustrate best practice in particular aspects of plan preparation.

The following examples illustrate best practice in particular aspects of plan preparation, as described in the guidance note.

Section 32 - Proposed Christchurch city plan - officer
[Reveal/Hide]

Section 32 - Proposed variation 13 to the Manukau District Plan
- Report 5: Management and provision of public open space 6
[Reveal/Hide]

Section 32 - Section 32 Report: Air Quality Chapter of the
Proposed Canterbury Natural Resources Regional Plan, 2002
[Reveal/Hide]

Section 32 - Variation 3 to the Marlborough Sounds Resource
Management Plan - Shipping activity in the Marlborough
Sounds, 2002 [Reveal/Hide]

Section 32 Report on the proposed Gore District Plan - Officer
[Reveal/Hide]

[back to top](#)

RMA provisions

The following are other sections of the Resource Management Act 1991 that are relevant to Section 32:

- **Sections 5-8** which relate to the purpose of the Act and how it might be achieved.
- **Section 9:** land uses are permitted unless there are rules to the contrary.
- **Sections 12-15:** the use of publicly owned resources such as water, air, and the coast are restricted unless expressly permitted.
- **Section 32A:** How a challenge may be made to a section 32 evaluation.
- **Section 35:** Councils have the duty to monitor the suitability and effectiveness of any plan.
- **Sections 68(3) and 76(3):** rules must be based on actual or potential effects of activities on the environment.
- **Section 85:** interests in land should not be made incapable of reasonable

use.

Local Government Act 2002

Practice in relation to the linkage between the RMA and LGA is evolving and case law is not available yet. To avoid a risk of challenge via judicial review under LGA it may be prudent to briefly canvass in the RMA s32 that the Council has turned its mind to the LGA requirements. This guidance arises from:

- **RMA s23** states that compliance with RMA does not remove the need to comply with other applicable Acts.
- **LGA s76** states that every decisions of a council must be made in accordance with decision making tests and processes specified.
- **LGA s79** sets out the discretion and judgments to be made for decisions (including RMA decisions).

[back to top](#)

Case law

The following cases contain discussion of Section 32 related matters (note all these cases except the last deal with s32 before the 2003 amendment:

- ***Countdown Properties (Northlands) Ltd v Dunedin City Council*** AP214/93 1994 NZRMA 145 (HC). This decision provides an analysis of the content and procedure of s32 analysis and when 'adopting' plans or plan changes applies. It also addresses who can make submissions in relation to s32 matters and when these can be made.
- ***Hodge and Canterbury Agricultural and Pastoral Association v Christchurch City Council*** C001A/96 1 NZED 130. An appeal challenging the s32(1) procedures can only be made in a formal submission under the First Schedule of the RMA. It also specifies that s32 does not contemplate public participation during a section 32 analysis.
- ***Foodstuffs (Otago Southland) Properties Ltd v Dunedin City Council*** W053/93 (1993) 2 NZRMA 497. A council is not required to prepare or publish for comment a section 32 report or documents before the decision is made. Also the decision says that a Council may consider the matters under ss 6, 7 and 8, as well as s5. It notes too that it is good practice in a s32 report, to record the council's decision that it is satisfied the measures meet the purpose of the RMA.
- ***Boon v Marlborough District Council*** W032/98 [1998] NZRMA 305. It is appropriate to consider market forces as a mechanism in s32 analysis.
- See ***Wellington International Airport v Wellington City Council*** W102/97 2 NZED 844 with respect to cost and benefit analysis.
- ***Wilkinson v Hurunui District Council*** C050/00 5 NZED 349. If an issue of compliance with s32(1) is not raised in a submission it cannot be raised at all. The decision also deals with the relevance of economic analysis.
- ***Leith v Auckland City Council*** A034/95 [1995] NZRMA 400. Parties alleging non-compliance with s32 must provide some evidence to support their

case not simply rely on the Council to provide all the evidence.

- See ***Capital Coast Health v Wellington City Council*** W101/98 4 NZED 9 with respect to applying more rigorous evaluation under s32 where more stringent controls are being proposed.
- ***Kirkland v Dunedin City Council*** C138/00 [2001] NZRMA 129, AP194/00 [2001] NZRMA 97, CA78/01 6 NZED 723 and CA121/01 6 NZED 725 [2002]. These decisions deal with the role of s32 and the scope of submissions raising inadequacy of s32 as a ground.
- ***Ngati Kahu v Tauranga District Council*** A072/94 [1994] NZRMA 481. A document labelled as a s32 report is not a specific requirement of the RMA; however, a person should be able to obtain from a council what reports or information it relied on for producing a particular objective, policy or rule.
- See ***GUS Properties Ltd v Marlborough District Council*** W75/94 with respect to S32 relating more to methodology rather than the cost, benefit or necessity of the activity itself.
- See ***Fish and Game NZ (Central South Island Region) v Otago Regional Council*** C79/2002 with respect to the various tests under s32 relating to s5 of the RMA.
- See ***Naturally Best New Zealand Limited and Shotover Park Limited v Queenstown Lakes District Council*** C49/2004 with respect to a s32 report for a variation to a plan and the scope of a submission on that variation which was not included in the s32 report

[back to top](#)

Related guidance notes

The following guidance notes are related:

- [Consultation process](#)
- [Non-residential activities in residential areas](#)
- [Policy and plan effectiveness monitoring](#)
- [Policy framework](#)
- [Private plan changes](#)

[back to top](#)

Relevant publications

Think Piece Two: Improving implementation of the Resource Management Act at the local level can produce better outcomes (PDF 1 MB)

Published by Federated Farmers - August 2003

The report focuses on transaction costs and offers practical solutions to improve the implementation of the RMA at local and regional levels.

[back to top](#)

Current challenges in practice

The following are current challenges which are being experienced by practitioners undertaking section 32 analysis:

Recording and reporting section 32 analysis

Keeping clear and concise records of section 32 analysis is a critical component of the implementation process. It helps to make the development of any plan transparent. A s32 report that summarises the evaluation and gives reasons for that evaluation must be available for public inspection at the time of public notification. Deciding on how to present and store information on section 32 analysis can be a difficult task, especially when dealing with large quantities of information and significant and/or particularly contentious issues. The financial costs associated with this can also be significant and Councils can find it challenging to finance good section 32 analysis and record keeping.

It is important that the section 32 records and/or reports are constantly readdressed throughout the planning process. This is to ensure that any changes or decisions are appropriately recorded and reasoned. This can be difficult to achieve when there are tight time constraints and limited finances available.

Recording and reporting section 32 analysis is also critical where a considerable amount of information held within a Council may be institutional knowledge which is not already documented. Where changes in staff occur this important information may be lost where there has been no record of the knowledge held.

Choosing suitable methods

It can be difficult to decide what methods, particularly non-regulatory ones, are suitable to address an issue when they have not been previously tested. Section 32 does not prescribe that only regulatory methods should be applied to environmental issues. However, Councils may find to use such methods, as their performance can be better measured through previous implementation. Non-regulatory methods tend to be monitored to a lesser extent even though they may be a more plausible option for dealing with some issues.

What is the right amount and type of consultation?

Consultation assists the production of a sound and transparent section 32 assessment. It can be difficult to determine what type and how extensive the consultation should be. The extent and type of consultation should be relative to the nature and scale of the issue and the level of public interest. Wide ranging consultation does not necessarily equate to any less potential for any new provisions to be challenged.

Using monitoring in section 32 analysis

Monitoring existing activities that are subject to resource consents and state of the environment monitoring can be useful in determining environmental issues but also in assessing the effectiveness of existing plan provisions. Sound monitoring can be a key mechanism in determining the need for future plan revisions. Inadequate monitoring and recording results can be detrimental to the entire process and could lead to the development of inappropriate methods for dealing with an issue.

Risk of acting v not acting

This is a new provision that was introduced in the August 2003 amendment.

The risk of implementing a method, even if the information is uncertain or insufficient, may outweigh the risk of not implementing a method. If the decision is appealed, the parties may undertake more extensive research. Subsequent research may change the position of whether to implement a particular method. Changes at this late stage can create unnecessary delays and costs to all parties. It is preferable that such information forms part of the initial evaluation.

The length of time before a plan change may become operative can be years. In the meantime, the risk of not acting on the basis of the information to hand is that the environment could be degraded. The risk of acting is that a method is chosen that is not efficient or effective and in the long term, may not prevent the environment from being degraded. The decision on whether to act on the basis of the information known at the time will be finely balanced.

Evaluation of private plan change assessments

As with resource consent auditing, the challenge in reviewing a private plan s32 report is not to duplicate the assessment, but to identify errors or omissions in the analysis. It is important that the Council carefully consider the s32 report in the wider context of the existing plan or other mechanisms that may sit outside the plan to achieve the environmental issue or objective.

Linkages of the Local Government Act 2002 and the RMA

Practice is evolving in terms of linking the LGA 2002 obligations with those of RMA.

Section 23 of RMA does not absolve a council of its obligations under s76 of the LGA. These decision-making obligations are similar in nature to what is needed for a s32 report.

Prudence suggests that cross-referencing to the LGA considerations as a part of the s32 will reduce the risk of challenge to this aspect of a council's decision-making.

[back to top](#)

Acknowledgements and editorial comments

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