

**BEFORE THE COMMISSIONERS APPOINTED BY THE
DUNEDIN CITY COUNCIL**

IN THE MATTER

Of a submission pursuant to
clause 5, Schedule 1 of the
Resource Management Act
1991 (the **Act**)

AND

Variation 2 to the Dunedin
City Council Second
Generation District Plan
(**Variation 2**)

BETWEEN

Aurora Energy Limited

Original Submission 217

Further Submission 28

**SUBMISSIONS OF COUNSEL ON BEHALF OF AURORA ENERGY
LIMITED**

DATED 7 SEPTEMBER 2021

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SUBMISSIONS OF COUNSEL ON BEHALF OF AURORA ENERGY LIMITED

May it please the Commissioners:

Introduction

1. Aurora Energy Limited (**Aurora**) owns and operates electricity distribution infrastructure that supplies electricity to more than 92,000 homes in the Queenstown Lakes, Dunedin and Central Otago Districts.
2. Aurora is the electricity distribution network provider for Dunedin City. Its network comprises an extensive network of sub-transmission conductors, underground cables, lines and supporting structures, transformers, zone substations and other infrastructure which connects Transpower's Transmission Network and provides individual connections to customers.
3. Aurora's has been involved with the review of the Dunedin City Council Second Generation District Plan (**2GP**) for some time. It lodged an original submission when the 2GP was notified in 2015 and an appeal to the Environment Court (and various s 274 notices) in late 2018. That appeal has been resolved by the parties and a consent memorandum is expected to be lodged with the Court in the coming months.
4. Aurora's involvement in the 2GP has focussed on recognising and providing for the effective and efficient operation of its network. A critical aspect of the operation of Aurora's network includes management of other land use activities which may locate near overhead conductors which have the potential to create reverse sensitivity effects. The effects are two-fold:
 - (a) Potential adverse effects on the health and safety and wellbeing of people in proximity to overhead conductors; and
 - (b) The proximity of buildings and structures to conductors which affects Aurora's ability to access its infrastructure for the purpose of operating and maintaining its network.

5. Aurora has also lodged a submission on Variation 2, although not subject of this hearing, but for context is summarised as follows:
 - (a) Seeking recognition of the requirement for easements in gross in favour of Aurora at the time of subdivision where the point of supply (as defined by the Electricity Act 1992 is located within private property.
 - (b) The inclusion of an advice note supporting the amendment sought in (a).
 - (c) An amendment to the requirement for service connections to the electricity network at the time of subdivision.
6. Aurora lodged a further submission in support of the submission by Spark New Zealand Trading Limited & Vodafone NZ Limited (for convenience, **Spark NZ**) on the basis that the relief sought provided an appropriate mechanism for consideration of infrastructure as a result of increased density housing and a greater likelihood of built form exceeding height limits.
7. Aurora's submission is supported by the evidence of Ms Joanne Dowd filed 3 September 2020.

Council Functions and Statutory Considerations

8. Counsel submits that the question of weight as between the PDP Strategic Direction Chapters, higher order planning instruments and part 2 of the RMA is a matter for the Panel's discretion. The Environment Court in *Colonial Vineyard Limited v Marlborough District Council*¹ clarified the legal considerations in which the evidence on a plan change should be considered. The Environment Court in that case provided a comprehensive list of considerations to apply or have regard to when deciding a plan change. For convenience, a list of those matters are included with this submission as **Appendix A**. It is anticipated that those principles are well-known to this panel so I will not reiterate them.

¹ [2014] NZEnvC 55, more recently summarised in *A & A King Family Trust v Hamilton City Council* [2016] NZEnvC 229.

Regional Policy Statement

9. The Panel must have regard to any proposed Regional Policy Statement when preparing and changing its District Plan and must give effect to any operative Regional Policy Statement and must also have regard to any matter of regional significance.³ The Regional Policy Statement for Otago 2019 (**RPS19**) was made partially operative in March 2021. For the purpose of Aurora's infrastructure all provisions of RPS19 are operative. Accordingly, we have not given any consideration to the 1998 Regional Policy Statement.
10. However, since Variation 2 was notified Otago Regional Council has notified the Proposed Regional Policy Statement for Otago June 2021 (**RPS21**). Therefore, as a proposed regional policy statement, it is relevant to the Panel's determination. The relevance of the RPS19 and RPS21 to these submissions are provisions related to reverse sensitivity.
11. There is no statutory guidance on how a weighting exercise is to be carried out. The relevant principles are established in case law. The leading case is *Keystone Ridge Ltd v Auckland City Council*²:

...In considering the weight that we give to it we take into account the following principles which arise from the various cases:

The Act does not accord proposed plans equal importance with operative plans, rather the importance of the proposed plan will depend on the extent to which it has proceeded through the objection and appeal process.

The extent to which the provisions of a proposed plan are relevant should be considered on a case by case basis and might include:

- (i) the extent (if any) to which the proposed measure might have been exposed to testing and independent decision-making.
- (ii) circumstances of injustice.

² *Keystone Ridge Ltd v Auckland City Council* HC Auckland AP24/10, 3 April 2001, at [16] and [37].

- (iii) the extent to which a new measure, or the absence of one, might implement a coherent pattern of objectives and policies in a plan.

In assessing the weight to be accorded to the provisions of a proposed plan each case should be considered on its merits. Where there had been a significant shift in Council policy and the new provisions are in accord with Part II, the Court may give more weight to the proposed plan.

12. In *Queenstown Central Ltd v Queenstown Lakes District Council*, Fogarty J said:³

[9] It is the scheme of the RMA that there is always an operative plan, and often a proposed plan. Before any consents are granted, the operative plan has to be applied, and regard must be had to the proposed plan, s 104. The jurisprudence is that the closer the proposed plan comes to its final content, the more regard is had to it. Consent has to be given under both plans. The extent that the plan has progressed through the plan-making process (the closer the proposed plan comes to its final content; generally more regard may be had to it).

13. We address each of the Keystone factors below:
14. RPS21 was only recently notified and the submission period closed on Friday 3 September. Counsel assisted Aurora in preparing a submission on RPS21 and consulted with other infrastructure providers on similar provisions, including Transpower and Spark. It is expected that there will be considerable submission points on the infrastructure chapter of the RPS21. In particular Aurora and Transpower seek stronger protection against incompatible activities, including provision to “avoid” i.e. not allow, incompatible activities near that infrastructure. Furthermore, those submissions have not yet been the subject of expert evidence, hearing or a determination of the freshwater commission – meaning their adequacy and appropriateness has not yet been tested.
15. There is an element of injustice with respect to the timing of RPS19 becoming partially operative and RPS21 being notified - the latter document being notified only 3 months after the former was made

³ *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 815 at [9].

partially operative. Furthermore, the national and ministerial direction that required the RPS21 to be notified related to concerns about the management of freshwater resources in Otago, and in particular to implement the National Policy Statement for Freshwater Management 2020 and the National Policy Statement on Urban Development 2020. That direction did not require a wholesale review of the infrastructure provisions of RPS19, which is what RPS21 has done.

16. Finally, with respect to issues of reverse sensitivity, it is submitted that RPS21 does not represent a significant change in policy direction. Both RPS19 and RPS21 seek to manage incompatible activities from the distribution network. Although the provisions of RPS19 are stronger in that regard, the reason set out in the s 32 report for RPS21 for reducing that level of protection was a lack of understanding about how protection of infrastructure from incompatible activities fit within the Regional Council's functions. Aurora's submission is that was an error and that there is a clear mandate under s 61(1) of the Act to consider other management plans under other acts. In Aurora's view, that includes the Electricity Act 1992; the Electricity (Safety) Regulations (2010); and the New Zealand Code of Practice for electrical Safe Distances 2010 (**NZEC34**).
17. Given the above, Counsel submits that RPS19 is to be afforded greater weight than the provisions of RPS21. Given that both documents are relevant, we set out the key provisions that Counsel submit support inclusion of a stronger approach to managing land use activities in proximity to electricity distribution infrastructure.

Partially Operative Regional Policy Statement 2019

18. Below is a summary of the key provisions of RPS19 with respect to the management of activities on Aurora's electricity distribution network.

Objective 4.3 Infrastructure is managed and developed in a sustainable way

Issue:

Social and economic wellbeing depends on having adequate infrastructure. Failing to provide for its functional needs can result in adverse effects.

19. Objective 4.3 identifies the importance to provide for the functional needs of infrastructure and how failing to provide for it can lead to adverse effects. In terms of the 2GP, failing to consider the electricity distribution network for activities that protrude beyond anticipated height plane levels and may lead to reverse sensitivity effects or create health and safety risks.

Policy 4.3.1 Managing infrastructure activities

Recognise and provide for infrastructure by all of the following

- (a) *Protecting and providing for the functional needs of lifeline utilities and essential emergency services;*
- (b) *Increasing the ability of communities to respond and adapt to emergencies, and disruptive or natural hazard events;*
- (c) *Improving efficiency of natural and physical resource use;*
- (d) *Minimising adverse effects on existing land uses, and natural and physical resources;*
- (e) *Managing other activities to ensure the functional needs of infrastructure are not compromised.*

[Emphasis added]

20. Aurora is a “lifeline utility” as defined by the Civil Defence Emergency Management Act 2002⁵ being an entity that distributes electricity through a network. Notably, that includes the entirety of Aurora’s network, not just those parts that RPS21 deems to be regionally significant. Furthermore, Policy 4.3.1 seeks to minimise adverse effects on existing land uses, including all of Aurora’s existing infrastructure, as well as to manage any other activities not covered by (a) to (d) to ensure that the functional needs of infrastructure are not compromised. In my submission, Policy 4.3.1 is directive that the functional needs of

Aurora's network is to be protected and to ensure that the functional needs of the infrastructure is not compromised.

21. The term "functional needs" has the same definition in the PRPS and the PDP and means: the locational, operational, practical, or technical needs of an activity, including development and upgrades.⁶ Functional needs include the possibility for development and upgrades which may be required to provide for the resilience of the network. The evidence of Ms Dowd is that the height, scale and physical location of a building is a key risk associated with the operation, maintenance, and potential future development of Aurora's network as well as its ability to avoid or reduce to the extent possible health and safety risks associated with its network.⁷ The functional needs of infrastructure are provided for in the following PRPS provisions:

Policy 4.3.3 Functional needs of infrastructure that has national or regional significance

Provide for the functional needs of infrastructure that has regional or national significance, including safety.

Policy 4.4.5 Electricity Distribution Infrastructure

Recognise and provide for electricity distribution infrastructure, by all of the following:

Recognising the functional needs of electricity distribution activities;

- (a) *Restricting the establishment of activities that may result in reverse sensitivity effects;*
- (b) *Avoiding, remedying or mitigating adverse effects from other activities on the functional needs of that infrastructure;*
- (c) *Minimising adverse effects of new and upgraded electricity distribution infrastructure on existing land uses;*
- (d) *Identifying significant electricity distribution infrastructure and managing effects of potentially incompatible activities through methods such as corridors.*

[Emphasis added]

22. Method 4.1 provides that all objectives and policies of the PRPS must be considered and given effect to when preparing district plans. That necessarily includes the provisions referred to above. Method 4.1 says:
23. “Policy 4.3.1: by providing controls adjacent to infrastructure where necessary to ensure the functional needs of infrastructure are not compromised”
24. The evidence of Ms Dowd outlines the need to ensure compliance with NZECP34 in order to manage the risk to health and safety of persons in proximity to overhead conductors as well as to provide for and enable the operation of the electricity distribution network, including any maintenance upgrade or repairs that are required.
25. However, it is noted that the risk is noted avoided even where there is compliance with height limit restrictions as a compliant building may still infringe on the requirements on NZECP34. Rather, Aurora seeks to manage the risk from buildings which seek to exceed height limit restrictions which may have the greatest risk to the health and safety of persons. Counsel submits that the provisions of RPS19 support a stronger approach to the management of activities in proximity to all of Aurora’s overhead conductors to ensure the ongoing viability of Aurora’s network and managing risks to health and safety.

Proposed Otago Regional Policy Statement 2021

26. Below is a summary of provisions of RPS21 relevant to the management of land use activities and infrastructure.

EIT-INF-P10 – Recognising resource requirements

Decision making on the allocation or use of natural and physical resources must take into account the needs of nationally and regionally significant infrastructure.

27. EIT-INF-P10 recognises the relationship between the effects of and on regionally significant infrastructure from the allocation and use of natural and physical resources. The allocation of natural and physical resources is realised through land use consents. Counsel submits that in determining the grant of a land use consent for a breach of a height limit, a relevant consideration may be the extent to that land use activities considers Aurora's infrastructure and whether, in the case of a height limit exceedance a health and safety risk is created.

EIT-INF-P15 – Protecting nationally or regionally significant infrastructure

Seek to avoid the establishment of activities that may result in reverse sensitivity *effects* on *nationally or regionally significant infrastructure*, and/or where they may compromise the *functional or operational needs* of *nationally or regionally significant infrastructure*.

28. RPS21 defines regionally significant infrastructure to include "electricity sub-transmission infrastructure" which is not the entirety of Aurora's network, but a sub-set of the network which conveys electricity between energy generation sources, the National Grid and zone substations and between zone substations. In Dunedin, that is typically through 11kV or 33kV overhead lines or, in the case of much of South Dunedin, underground cables. Through Aurora's appeal on the 2GP, it sought to map these lines onto the 2GP Maps so that their location is known to all 2GP Plan users, which was agreed by Council and parties.
29. The notified version of EIT-INF-P15 sets a high bar to *protect* electricity sub-transmission infrastructure by seeking to avoid land use activities that may create reverse sensitivity effects that may compromise the functional or operation needs of that infrastructure. In terms of Aurora's further submission, this policy supports half of Aurora's concerns, being the extent to which it can provide for the ongoing operation and function of the existing infrastructure.
30. Counsel submits that taking EIT-INF-P10 and P15 together, the two halves of Aurora's further submission are made clear, which seek to:

- (a) Manage land use activities i.e. height limit exceedances where as a result of that breach a health and safety risk is created; and
- (b) Providing for the ongoing operation and function of the electricity sub-transmission network.

District Plan Provisions

31. The 2GP goes some way to recognise and provide for Aurora's network, particularly in terms of its functional or operational needs. Strategic Objective 2.3.1 is directive in that regard, providing

Strategic Objective 2.3.1

Land, facilities and infrastructure that are important for economic productivity and social well-being, which include industrial areas, major facilities, key transportation routes, network utilities; and productive rural land:

- (a) are protected from less productive competing uses or incompatible uses, including activities that may give rise to reverse sensitivity; and
 - (b) in the case of facilities and infrastructure, are able to be operated, maintained, upgraded and, where appropriate, developed efficiently and effectively.
32. SO 2.3.1 seeks to *protect* infrastructure from incompatible land use that may give rise to reverse sensitivity, which, in Counsel's submission gives effect to (inter alia) RPS21 EIT-INF-P15 and RPS19 Policy 4.3.1(e). Counsel submits that this direction provides a basis upon which to include additional guidance in the 2GP regarding the consideration of the electricity distribution network when considering a resource consent application to breach the height limit.
33. Objective 5.2.2 implements SO 2.3.1 as follows:

Objective 5.2.2

The operational efficiency and effectiveness of network utilities is not compromised by development locating near these activities.

34. In circumstances where, as a result of the exceedance of a height limit, that the only acceptable engineering solution to avoid health and safety risks is to remove the line, then Counsel submits that Objective 5.2.2 is not given effect to.

Relief Sought

35. The relief sought by Spark was to Amend Rule 15.10.4.7 (assessment of restricted discretionary activities) to add a new assessment matter in regard to infringement of maximum height limits as follows:

x. The extent to which an exceedance of the height standard results in reverse sensitivity effects on adjacent infrastructure networks and how this can be mitigated.

36. Aurora continues to support the relief sought. However, if the commissioners are minded to grant relief with respect to electricity infrastructure, then Ms Dowd has offered additional drafting to elaborate on the types of effects that are sought to be avoided and by providing a clear, objective standard by which to base consideration of the adverse effects on

General assessment guidance:

Council will generally refuse consent if the extent to which the height limit is breached does not comply with Section 3 of the New Zealand Electrical Code of Practice for Electrical Safe Distances (NZECP 34:2001).

“On the plan”

37. Counsel notes the s 42A Report Authors concerns about scope, noting that the effect of this change would apply regardless of the changes sought in Variation 2. Counsel for Aurora similarly agrees with the reasons offered by Spark that contravention of the height performance standard (Rule 15.6.6) may be more likely where higher density and smaller site sizes is provided for through other Variation 2 changes.
38. Counsel accepts the case law authorities relating to whether a submission is “on a plan change” including the summary contained in

the decision of the Independent Hearings Panel dated 31 May 2021 which, for convenience, is produced below:⁴

We received advice on relevant case law from the reporting officer, which she stated had informed the approach to her assessments and recommendations. In particular, the s42A Report referred to the recent Environment Court decision *Calcutta Farms Limited v Matamata-Piako District Council*⁵; the High Court case *Palmerston North City Council v Motor Machinists Limited*⁶; and the High Court decision in *Clearwater Resort Limited v Christchurch City Council*⁷.

The Panel agrees that the s42A Report has accurately summarised the key points of these cases. We agree that to be regarded as 'on' a variation, and in scope, a submission must:

- (i) Address the extent to which the variation changes the plan;
- (ii) Not be coming out of 'left field';
- (iii) Reasonably be said to fall within the ambit of the variation, with incremental or consequent extensions to zoning changes requiring no additional section 32 analysis; and
- (iv) Not carry a risk that people affected by the variation (if modified in response to the submission) would be denied an effective opportunity to participate in the plan change process.⁸

39. We understand this to be the Panel's interpretation of the *Clearwater test*. For completeness, we outline the *Clearwater test* below:⁹

- (a) A submission can only fairly be regarded as "on" a variation if it is addressed to the extent to which the variation changes the pre-existing status quo.

⁴ Decision of independent hearing panel dated 31 May 2021 of a determination of 'out of scope' submissions lodged in relation to proposed Variation 2 to the Proposed Second Generation Dunedin City Plan.

⁵ [2018] NZEnvC 187.

⁶ HC, Palmerston North, Kos J, 3 May 2013.

⁷ AP34/02, 14 March, Young J.

⁸ Decision at para 11.

⁹ *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP 34-02, 14 March 2003 at [66]

- (b) But if the effect of regarding a submission as “on” a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly “on” the variation.

- 40. The s 32 Report Author records the matters which Variation 2 addresses as follows:

Variation 2 addresses the shortfall in housing over the short and medium term by zoning more land for housing (adding new residential areas, known as ‘greenfield’ development, through new General Residential 1, Township and Settlement and Large Lot Residential 1 zoning), enabling a higher density of housing in parts of the city through new General Residential 2 zoning, and changing rules and policies to allow increased development density and flexibility of development in many residential areas of the city.

- 41. One of the primary mechanisms that Variation 2 seeks to address the shortfall in housing is through ‘upzoning’ large areas of residential zoning, to enable greater housing density on a site, or by enabling subdivision of sites into smaller parcels which may then be developed. This is typically referred to as “infill” subdivision and was the subject of Aurora’s original submission in relation to the provision of new electricity connections and the requirement for easements over existing connections. However, Counsel also understands that many of the areas that were chosen for upzoning comprise housing stock that may be optimal for redevelopment entirely, by demolishing an existing dwelling and constructing dwellings that reach the maximum development yield as anticipated by that zone.
- 42. The height of built form is a key factor in achieving development yield and may require exceedance for a range of factors such as topography of the site or simply to achieve a more desirable built form. To the extent that Variation 2 enables higher density dwellings and built form, Counsel submits that matters relevant to the consideration of height exceedance address the matters subject to the variation.

43. Counsel submits that the submission does not 'come out of left field' because it addresses a key factor relevant to development yield and housing supply. Indeed, the s 32 Report Author considers the provisions of the National Policy Statement on Urban Development, squarely raising the fact that it directs a district plan to enable heights and density of urban form commensurate with the level of accessibility by existing or planned active or public transport to a range of commercial activities and community services or the relative demand for housing use in that location, whichever is greater (Policy 5). The NPS-UD gives no qualifying matters regarding this policy.
44. Furthermore, Counsel submits that it is more likely that the height performance standard will be breached as a result of push towards addressing the housing shortfall and given that a restricted discretionary resource consent is triggered, as opposed to discretionary or non-complying. Given the nature of the activity status, unless issues such as reverse sensitivity or minimum safe distances in relation to Aurora's network are addressed in the matters of discretion, then they are not relevant to the grant of the consent. Currently, the 2GP does not address this issue in Rule 15.10 Assessment of Restricted Discretionary Activities (Performance Standard Contraventions).
45. Counsel submits that the amendment sought by Spark NZ, including the alternative relief sought by Aurora is an incremental or consequent extensions to the changes introduced by Variation 2. Where higher density dwellings or built form is encouraged it is relevant to consider whether adverse effects on existing overhead infrastructure will be created. It is considered that no additional s 32 analysis is required to implement the change given that the 2GP already addresses issues of reverse sensitivity and managing incompatible activities in relation to infrastructure (including by protecting that infrastructure from activities). The amendment sought is therefore consequential to the approach contained in the 2GP for managing incompatible activities, including built form.

46. Finally, it is submitted that there is negligible risk that people affected by the variation would be denied an effective opportunity to participate in the plan change process because maintaining safe distances in relation to overhead electricity infrastructure is mandatory already, as set out in NZECP34. If a person is required to consider NZECP34 then they either:
- (a) Assess the extent of height limit breach against the standards in NZECP34 and pass the minimum thresholds, thereby achieving the performance standard; or
 - (b) Do not meet the minimum safe distances would be in breach of NZECP34.
47. If consent was granted in contravention of NZECP34 and building work proceeded, then that person may face penalties under the Electricity (Safety) Regulations 2010 and/or the Electricity Act 1992. It is therefore in the interests of a prospective applicant to be aware of their obligations under NZECP34.
48. For these reasons, Counsel submits that the Spark NZ submission is “on the plan”.

Conclusion

49. Counsel submits that the higher order planning instruments, including the strategic directions of the 2GP, requires lower order provisions of the 2GP recognise and provide for the functional and operational needs of infrastructure, including by managing potential reverse sensitivity effects from incompatible activities. Activities that seek to locate near existing infrastructure give rise to potential reverse sensitivity effects that may compromise the operation or function of that infrastructure, including by creating health and safety risks on people.
50. Variation 2 encourages higher density built form in urban areas where there is a significant amount of existing above ground infrastructure. The two activities, high density built form and infrastructure, can co-exist, but the risks outlined above need to be managed appropriately.

Counsel submits that requiring consideration of an objective (and mandatory) standard is an appropriate method of addressing that risk in zones that encourage higher density built form.

Dated 7 September 2021

A handwritten signature in blue ink, appearing to read 'S R Peirce', is written over a horizontal line.

S R Peirce

Counsel for Aurora Energy Limited

Appendix A

Colonial Vineyard Limited v Marlborough District Council

A. General requirements

1. A district plan (change) should be designed to accord with⁵ - and assist the territorial authority to carry out – its functions⁶ so as to achieve the purpose of the Act⁷.
2. The district plan (change) must also be prepared in accordance with any regulation⁸ (the QLDC is not currently affected by the Planning Standards) and any direction given by the Minister for the Environment⁹.
3. When preparing its district plan (change) the territorial authority must give effect to¹⁰ any national policy statement (the New Zealand Coastal Policy Statement is not relevant to Queenstown)¹¹.
4. When preparing its district plan (change) the territorial authority shall:
 - a. Have regard to any proposed regional policy statement¹²;
 - b. Give effect to any operative regional policy statement¹³.
5. In relation to regional plans:
 - a. The district plan (change) must not be inconsistent with an operative regional plan for any matter specified in section 30(1) or a water conservation order¹⁴; and
 - b. Must have regard to any proposed regional plan on any matter of regional significance etc¹⁵.
6. When preparing its district plan (change) the territorial authority must also:
 - Have regard to any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations¹⁶ to the extent that their context has a bearing on resource management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities¹⁷
 - Take into account any relevant planning document recognised by an iwi authority¹⁸; and

3 Section 73, RMA.

4 Section 72, RMA.

5 Section 74(1) of the Act

6 As described in section 31 of the Act

7 Sections 72 and 74(1) of the Act

8 Section 74(1) of the Act

9 Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.

10 Section 75(3) RMA

11 The reference to “any regional policy statement” in the Rosehip list here has been deleted since it is included in (3) below which is a more logical place for it.

12 Section 74(2)(a)(i) of the RMA

13 Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

14 Section 75(4) of the Act [as substituted by section 46 Resource Management Amendment Act 2005]

15 Section 74(2)(a)(ii) of the Act

16 Section 74(2)(b) of the Act

17 Section 74(2)(c) of the Act

18 Section 74(2A) of the Act

- Not have regard to trade competition¹⁹ or the effects of trade competition;
7. The formal requirement that a district plan (change) must²⁰ also state its objectives, policies and the rules (if any) and may²¹ state other matters.

B. Objectives [the section 32 test for objectives]

8. Each proposed objective in a district plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act²².

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to implement the objectives, and the rules (if any) are to implement the policies²³;
10. Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives²⁴ of the district plan taking into account:
 - i. The benefits and costs of the proposed policies and methods (including rules); and
 - ii. The risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods²⁵; and
 - iii. If a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances²⁶.

D. Rules

11. In making a rule the territorial authority must have regard to the actual or potential effect of activities on the environment²⁷.
12. Rules have the force of regulations²⁸.
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive²⁹ than those under the Building Act 2004.
14. There are special provisions for rules about contaminated land³⁰.
15. There must be no blanket rules about felling of trees³¹ in any urban environment³².

E. Other statutes:

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

The Colonial Vineyard decision predated the 2013 amendment to the Act coming into effect.

19 Section 74(3) of the Act as amended by section 58 Resource Management (Simplifying and Streamlining) Act 2009

20 Section 75(1) of the Act

21 Section 75(2) of the Act

22 Section 74(1) and Section 32(3)(a) of the Act

23 Section 75(1)(b) and (c) of the Act (also section 76(1))

24 Section 32(3)(b) of the Act

25 Section 32(4) of the RMA

26 Section 32(3A) of the Act added by section 13(3) Resource Management Amendment Act 2005.

27 Section 76(3) of the Act.

28 Section 76(2) RMA

29 Section 76(2A) RMA

30 Section 76(5) RMA as added by section 47 Resource Management Amendment Act 2005 and amended in 2009

31 Section 76(4A) RMA as added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

32 Section 76(4B) RMA – this "Remuera rule" was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009

Accordingly, the tests poised by the Environment Court need to be read subject to the effect of that Amendment Act, specifically:

Points A1 and 2 need to be read subject to the amended section 74(1) of the Act which states:

“A territorial authority must prepare and change its District Plan in accordance with –

- a. Its functions under section 31; and
- b. The provisions of Part 2; and
- c. A direction given under section 25A(2) [by the Minister for the Environment]; and
- d. Its obligation (if any) to prepare an evaluation report in accordance with section 32; and
- e. Its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and
- f. Any regulations”.

Point C10 needs to be read subject to the amended section 32³³ including in particular:

- “(1) An evaluation report required under this Act must - ...
 - a. Examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by –
 - i. Identifying other reasonably practicable options for achieving the objectives; and
 - ii. Assessing the efficiency and effectiveness of the provisions in achieving the objectives; and
 - iii. Summarising the reasons for deciding on the provisions; and
 - ...
- (2) An assessment under subsection (1)(b)(ii) must –
 - a. identify and assess the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for –
 - i. Economic growth that are anticipated to be provided or reduced; and
 - ii. Employment that are anticipated to be provided or reduced; and
 - b. If practicable, quantify the benefits and costs referred to in paragraph (a); and
 - c. Assess the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions....
- (4) If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified the circumstances of each region or district in which the prohibition or restriction would have effect.”

33 Introduced by section 70 of the Resource Management Amendment Act 2013