

# Assessment Criteria Discussion Paper

Assessment criteria are widely used within District Plans as an additional guide when considering resource consent applications and environmental effects. Assessment criteria typically draw attention to specific environmental issues and outline matters in which control or discretion is to be regarded.

This paper aims to clarify the purpose and need for assessment criteria within the District Plan. Looking at the status quo within the Whanganui District Plan, current practice within reviewed district plans in neighbouring districts and other Councils around New Zealand. Current view on best practice and how assessment criteria have been addressed by the Environment Court will also be considered.

From this a conclusion on how assessment criteria will be addressed through the Whanganui District Plan review will be developed.

## Purpose of Assessment Criteria:

It is important to first understand the purpose of assessment criteria and how they can aid decision making through the resource consent process.

Assessment criteria are generally used to give Council officers' and the public an outline of what will be considered when discretionary or non-complying resource consent application are submitted. There are also situations (at least within the Whanganui District Plan) where assessment criteria are used in relation to permitted, controlled and restricted discretionary activities.

Assessment criteria often resemble policies. They aim to identify considerations for resolving key issues, much like policies. However, they do not hold the legal weight of a policy and should not be treated as such. Assessment Criteria are believed to give certainty to both the Council and the public around what will be considered when assessing a consent application.

While assessment criteria are provided for under the Resource Management Act 1991 as a form of Method, as are rules. It is stated on the Quality Planning website that assessment criteria should never resemble rules nor should they be considered on the same level as rules.

Assessment criteria should not be included in the plan as rules. The statutory framework of the RMA enables provision for such criteria (or matters of assessment) to be included in such a way that the consent authority should have regard to them through their presence in objectives and policies.

## Other Councils:

	Are they in the District Plan as separate chapters?	Do they repeat the RMA or rules?
Auckland Unitary Plan	NO	NO

Christchurch City Council	n/a	n/a
Waikato District Council	n/a	n/a
Wellington City Council	YES	NO
Gisborne District Council	n/a	n/a
	n/a = No assessment criteria where identified	

### Neighbouring Councils:

	Are they in the District Plan as separate chapters?	Do they repeat the RMA or rules?
Quality Planning (best practice)	n/a	n/a
Manawatu District Council	YES	YES
New Plymouth District Council	NO	NO
Rangitikei District Council	NO	NO
Horowhenua District Council	YES	NO
Wanganui District Council	YES	YES
n/a = No assessment criteria where identified		

There are a mix of Councils that do and don't use assessment criteria within their District Plans. While it is relatively common practise, it is by no means a requirement to include assessment criteria in any form within a District Plan.

Even within larger urban centres assessment criteria are not consistently used. The Proposed Auckland Unitary Plan (PAUP) and the Wellington District Plan include assessment criteria. However, the Christchurch and Waikato District Plan do not. Further to this, Auckland and Wellington take a different approach to how assessment criteria are structured within their plan. The PAUP include their assessment criteria within each relevant chapter. Whereas the Wellington District Plan has their assessment criteria in separate chapters within the plan.

Councils of a similar size to Whanganui also take a mixed approach to assessment criteria. Horowhena District Council and New Plymouth District Council both include assessment criteria within their plans. Horowhenua have their assessment criteria set out in a separate chapter. Whereas New Plymouth District Council include theirs within each relevant chapter. Gisborne District Council and South Taranaki District Council do not include any standalone assessment criteria within their plan, but Gisborne has incorporated them within policies.

### Case Law:

*In regards to “an Application by Christchurch CC [1995] NZRMA 129; (1994) 1B ELRNZ 348 (PT), the Tribunal declined to make a declaration as to whether a district plan may include assessment criteria in respect of controlled, discretionary, or non-complying activities. It accepted, however, that assessment criteria could lawfully be included in a plan either as objectives or policies or under the former s 75(1)(d) as an “other method” for implementing policies. Although such criteria would not be a rule (or standard) that prohibited, regulated, or allowed activities, they were nevertheless matters that must be taken into account as a matter to be considered.*

*See also RDM Consultants Ltd v Manawatu-Wanganui RC EnvC W091/98, where the Court observed (obiter) that there was no necessity to clutter a plan with assessment criteria and suggested that it was more appropriate for these guidelines to be left separate from the plan. The Court warned of a danger of enshrining in a plan a purportedly exhaustive list of guidelines which, on closer examination, may reveal “glaring omissions”. It suggested that relevant matters to be taken into account in respect of any particular application should be addressed as submissions and evidence; rather than enshrined in the plan.”*

*“Comment: However, the common practice of including assessment criteria may be useful to applicants, submitters, and the consent authority — provided that there is no suggestion that these matters preclude other relevant considerations or are “exhaustive”. Although a council is not entitled to “fetter its discretion” in considering resource consent applications (with the exception of controlled and restricted discretionary activities), it is suggested that it is desirable to indicate matters to which it will have particular regard and that where a council does so, these may have the force of policy.”*

Other than the case above there is very little case law around assessment criteria themselves. There are numerous case where assessment criteria are discussed as tests for controlled, discretionary and restricted discretionary activities. From this it can be understood that the use of assessment criteria is generally accepted by the Environment Court. However, their legal standing is less than that of Objectives, Policies and Rules.

Westlaw:

<http://www.westlaw.co.nz/maf/wlnz/app/document?&src=search&docguid=la4cee286e12b11e08eefa443f89988a0&epos=4&snippets=true&fcwh=true&startChunk=1&endChunk=1&nstid=std-anz->

## Status Quo:

Currently assessment criteria sit in a separate chapter within the plan, Chapter 23 Assessment Criteria. This chapter is then broken down into 17 different sub-sections addressing the different environments within the district. The sections are as follows:

- 23.1 General Criteria
- 23.2 Buildings
- 23.3 Indigenous Vegetation
- 23.4 Landscape
- 23.5 Riparian Margins
- 23.6 Heritage
- 23.7 Subdivision – Part I
- 23.8 Vehicle Access, Parking and Signage
- 23.9 Transport Infrastructure
- 23.10 Water Infrastructure
- 23.11 Wastewater Infrastructure
- 23.12 Stormwater Infrastructure
- 23.13 Earthworks (Associated with Subdivision)
- 23.14 Network Utilities
- 23.15 Streetscape and Landscaping
- 23.16 General Urban Design Criteria
- 23.17 Earthworks

After discussions with the Resource Consent team a clear idea of how the existing assessment criteria area are currently used came through. The Subdivision, Earthworks and Infrastructure chapter is the most commonly use section. This could be linked to the complexity of subdivision applications and/or of the reviewed subdivision, earthworks and infrastructure chapters themselves. The consent team also express an interest to keep the content covered within these sections, whether that was in the assessment criteria, objectives and policies or a mixture of both. There was no concern around how these are captured, as long as they were in some method.

There is currently no consistency throughout the sections. Some sections relate to any activity status other than permitted, some relate to only discretionary and non-complying. This is largely due to the rolling review process. Some of the sub-sections have already been reviewed and therefore resemble more up-to-date practices. Some sections have been in place since first written in the mid 1990's and are out of date.

There is often no clear link between the assessment criteria and objectives and policies within the Plan. Not only does this make it hard to use, it also leaves room for dispute if specific assessment criteria are challenged. There is also a need for consistent wording throughout the assessment criteria. Some areas of the assessment criteria have been reviewed and others haven't, naturally the wording in each section can vary. A standard approach where applicable would be more practical.

It is clear that having assessment criteria incorporated into each chapter would be preferable, so that everything to be considered, is in one place. This would make it easier for internal and external use.

It is clear that a lot of the existing assessment criteria are redundant or generally unhelpful. It is important that the purpose of assessment criteria is understood and applied. There is no value added by including assessment criteria for the sake of including something.

Many of the sub-sections particularly around earthworks, infrastructure and subdivision largely resemble rules. This is likely due to there being a transition period between use of the NZS4404:2004 and adoption of NZS4404:2010 which will happen this year. The 2004 version is what was accepted by Council when Plan Change 27 Subdivision, Earthworks and Infrastructure was drafted. Through Plan Change 27 particular elements of the more current NZS4404:2010 were incorporated into the assessment criteria of the Plan. This was to ensure the benefits of the 2010 version were included until such time as the NZS4404:2010 was adopted.

As the NZS4404:2010 is currently being adopted many of the assessment criteria in these sections are now redundant.

## Conclusion:

The purpose of assessment criteria is to add guidance and clarification for both decision makers and other users' of the District Plan, in addition to Objectives and Policies. Assessment criteria should relate to an environmental effect that is to be managed and should be a point of clarification rather than a generalised statement. It is important to keep the purpose of the criteria in mind when considering the appropriateness of assessment criteria.

Duplication of assessment criteria and objectives and policies should be avoided. Assessment criteria can easily morph into rules. It is important that this does not happen as the benefit of the assessment criteria can be lost.

There are areas in the existing Plan that currently read as rules or policies outside the normal framework. The intent of such criteria need to be reviewed to determine whether duplication of policy.

Assessment criteria can be a useful method to aid decision making. However they can also be easily overdone adding a layer of complexity rather than easing it. When it comes to assessment criteria less is more.

It will be more useful to have a few assessment criteria that highlight particular environmental effects that cannot be adequately covered through objectives and policies alone, or to use assessment criteria within a policy framework, than to have a suite of assessment criteria that adds little value.

## Recommendation:

- A comparison of all assessment criteria with objectives and policies in the Plan to remove duplication.
- Where there is no direct duplication of the intent of the assessment criteria exists; an assessment as to whether the criteria is still relevant should follow. If it is still needed consider including as a policy or an assessment criteria to be located within the corresponding chapter. If it is not relevant, delete.
- When it comes to Subdivision, Earthworks and Infrastructure these sections should also be compared with the current NZS4404:2010. Where duplication exists the corresponding assessment criteria should be deleted. Any other criteria should be compared to the existing plan and assessed like all other assessment criteria.
- Ensure the remaining criteria are relevant, concise and sit within the relevant topic chapter.