

Section 32 – Options for Refinement

Introduction

Section 32 imposes an important discipline on local authorities to ensure that the provisions of plans imposed on the community are “appropriate”. Although the section has been modified on several previous occasions, the basic obligation to have regard to the efficiency and effectiveness of policies and methods (by considering costs and benefits) remains. Difficulties arise because producing section 32 reports can be time consuming and expensive and the added value is seldom as great as might be expected. In practice, section 32 reports, although lengthy, are narrative in style and substance and conclusions are based largely on assertion rather than quantitative analysis or demonstrated fact. Although designed to reduce costly and ill-considered regulation, section 32 can itself impose cost and delay that undermines the overall efficiency and cost effectiveness of plan making.

The conundrum in reviewing section 32 is that, on the one hand, the notion of imposing a discipline on local regulators to justify the need for, and (relative) practical and cost effectiveness of interventions is eminently sensible. On the other hand, overall efficiency in the preparation of district and regional plans can be compromised by obligations that impose costs for little benefit.

Synopsis of problems

- “Hard” (quantified) analysis of plan provisions is often difficult (while usually theoretically possible - using various analytical and economic/econometric techniques - using such techniques is inevitably costly of the local authority)
- Expectations of the public and resource users can be high while the ability to deliver is low (and in practice only ever attempted for a very limited number of high profile/high potential cost issues)
- Section 32 refers to evaluating the appropriateness of objectives and policies but only defines “appropriateness” in respect of policies. This leaves open the question of what an appropriate objective is and whether, given the breadth of s.5 the requirement to consider objectives reveals anything valuable. (Given that it is easy just to assert “appropriateness” and there is little opportunity to contest such an assertion).
- Section 32 imposes a huge task in respect of plans with several hundred objectives and many hundred individual policies and methods. In reality, complying with a strict interpretation of section 32 is beyond even the best resourced councils – and even reasonable efforts yield voluminous (and undoubtedly seldom read) reports.

Possible solutions

There are a number of ways section 32 could be refined. The most obvious options would include the following.

- Reference to *objectives* could be removed so that the section focuses on the cost and benefits of intervention (policies and methods) rather than whether the purpose of the intervention is “appropriate”. Whether an objective is appropriate in terms of the scope of the RMA could remain to be considered through the submission process but would not be recorded in the section 32 report. This would remove the uncertainty around what is meant by “appropriateness” of objectives in the section 32 context.
- A *threshold test* could be introduced so that the obligation to undertake an evaluation is not universally applied to every plan provision but only to a subset of “significant” provisions. In many ways this would reflect current practice but may introduce an important signal for plan makers. It may also serve to focus limited analytical capacity on the critical issues. There may be a broad analogy here with the obligation under the LGA 2002 to use the special consultative process for “significant proposals”.
- Certain provisions might be specifically excluded from attracting obligations under section 32. *Exclusions* might exist, for example, when new provisions would be less stringent than those they are designed to replace. (The term “less stringent” is used here because it is already defined in the RMA. However, it is intended to refer to any provisions that “free up” rather than constrain resource use in comparison to the relevant existing plan provision). Exclusions might be broader and encompass any provision that merely continues an existing regime. (It may also be possible to cross reference section 32 to section 35 of the Act and exclude any provisions that section 35 evaluation has demonstrated to be effective and efficient).
- The section could make clear that evaluation should be undertaken with respect to the *package* of policies and methods rather than requiring evaluation of individual methods. The section might, for example, refer to evaluation of policies *and associated methods* (rather than each policy and method).
- Taking a more radical look at the nature of the evaluation required. The Act might make clear that the evaluation required is more of an explanation of how provisions are intended to work – with all the assumptions set out explicitly (intervention logic) so that the logic can be scrutinized and subsequently tested through implementation and evaluation.
- Safeguards against poor policy making should remain. It is necessary the Act could make clear that provisions are challengeable on the basis that they would not be effective or efficient having regard to costs and benefits.