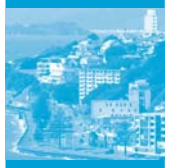
Ministry for the Environment
Manatū Mō Te Taiao

→ AN ESSENTIAL REFERENCE FOR PEOPLE INTERESTED IN THE RMA

Your Guide to the Resource Management Act

YOUR GUIDE TO THE RESOURCE MANAGEMENT ACT

Contents



Preface

The Resource Management RMA 1991 (RMA) is an important piece of legislation that influences our lives every day. It has a significant bearing on how we choose to live, work and play. Under its framework, New Zealand is moving towards a more sustainable future, one in which we will live more in harmony with the environment that sustains us.

Having a basic knowledge of the RMA is vital for people whose business or private activities involve natural resources such as water or land, those who wish to protect the wider environment, or those who want to get involved in the decisions that affect their neighbourhood, town, papakainga or local environment.

Most people and groups can come into contact with the RMA in different ways, such as:

» when they seek to carry out a new activity or build something and become aware that they may or may not need a *resource consent* (see Section 3 of this guide)

» when considering how to prepare the *assessment of environmental effects* that must be attached to each *application for resource consent* (see Section 3.3.5)

» when someone asks them whether they would be prepared to give *written approval* for something the person wishes to carry out that needs a *resource consent* (see Section 3.3.1)

» when they read in the public notices column of a local newspaper that a council has *publicly notified an application for resource consent*, *a proposed plan or policy statement, a change to a proposed plan or policy statement*, *or a requirement for a designation*, to which submissions are invited, and they want to establish whether what is proposed will affect them or the environment in some way (see Section 4)

» when they are served with an *abatement notice, enforcement order* or *excessive noise direction* (see Section 5.2)

» when wondering what they can do to help protect the environment (see Section 5)

» when they are unhappy with a *decision* made by a council or are unsure whether they should *lodge an appeal* in the *Environment Court* (see Section 3.5).

This guide cuts through the jargon and confusion sometimes generated about the RMA, and presents a simple explanation of the legislation, the processes it has established, and how you can pursue your interests, whatever they may be. It has been written from the perspective of users of the RMA, and in it you will find information on (and examples of):

» why the RMA came about

» what it sets out to achieve

» who does what under the RMA

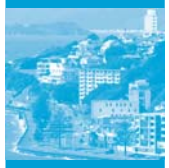
» your responsibilities for the environment when seeking to carry out an activity

- the opportunities for you to influence decisions made about the environment, and how you can take action to protect the environment
- who you can turn to and where you can go for further information about the RMA.

The RMA was developed with the needs of all New Zealanders in mind. It is not solely a law for experts. Its success relies on input from all interests and the public at large.

Throughout this guide, the Resource Management Act is referred to as the *RMA*.

Please note: This guide provides an outline of the main features of the RMA and the elements of good practice. It should not be used as a substitute for the RMA itself.



1 Introduction

1.1 The origins of the Resource Management Act

The RMA came into force on 1 October 1991 after four years of intense work. It replaced more than 20 major statutes and 50 other laws related to the environment (some dating from 1889), and was the largest law reform exercise in New Zealand's history. During the development of the RMA, the significant environmental problems facing New Zealand were identified. The views of many people were sought on the best ways of tackling these problems.

Until the law reform project began, a number of laws and administering agencies had been developed to address environmental problems as they arose. The result was a rather ad hoc collection of uncoordinated approaches, with considerable conflicts, gaps and overlaps. This led to some environmental problems not being adequately addressed, while multiple requirements sometimes created unreasonable delays.

The RMA set out to create a more streamlined, integrated and comprehensive approach to environmental management. A review of local government at the same time provided legislators with an ideal opportunity to simplify the way the new legislation would be implemented.

The RMA was groundbreaking legislation. At the time of its enactment, no other country had a mechanism for managing the quality of land, air and water under a single law. Since that time, many other countries have moved to develop integrated environmental legislation.

1.2 The purpose of the Resource Management Act

We are justifiably proud of the beauty, majesty and productivity of New Zealand. We do not suffer some of the serious difficulties of more heavily populated countries. Nevertheless, there is no room for complacency. Despite our relatively low population, we have had a profound influence on the quality of our environment. The clearing of forests, draining of wetlands, use of the land for farming, and the growth of our towns and cities have dramatically affected water quality in our rivers and streams, our bird life, our soil resources and our historic heritage, including cultural sites.

Our growing population and the towns and cites, industries, and transport that support us have placed pressures on our soils, groundwater, rivers, ocean, estuaries and air quality. Introduced pests such as possums, rats and weeds are increasingly threatening our indigenous species. As a nation we contribute to global emissions of greenhouse gases and ozone-depleting substances. For more information on the environmental pressures facing New Zealand refer to *The State of the Environment* information on the Ministry for the Environment's website at: www.mfe.govt.nz/state/

Essentially, the problem is that some of the actions we take are not *sustainable* in the long term. Some of our actions can cause irreparable damage to our environment. While those activities enable us to pursue our interests, they may not allow our children, grandchildren or descendants to pursue their interests.

The way we manage the environment is crucial to our economic and social welfare. New Zealand's farming, fishing and forestry industries are totally reliant on our soil and water resources. Increasingly, our overseas markets and consumers want to know that the products they purchase are healthy, safe

and produced in an environmentally sound way. Our tourism industry also trades on New Zealand's clean green image. On a local scale, we can also affect the quality of life for ourselves, our neighbours and our communities through our actions. The vitality of our economy and our standard of living is inextricably linked to the health of our environment.

The RMA is one step toward addressing these issues and recognising the importance of the environment to our continued economic, social and cultural welfare. It is a key tool in the pursuit of the New Zealand Government's vision of *a clean, healthy and unique environment, sustaining nature and people's needs and aspirations* (as stated in the *Environment 2010* Strategy published in 1995).

The stated purpose of the RMA as contained in section 5 of the Act is *to promote the sustainable management of natural and physical resources.* For the purposes of the RMA, *sustainable management means*:

> *Managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while –*
>
> *(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
>
> *(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
>
> *(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

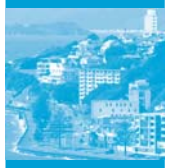
1.3 What 'sustainable management' means in practice

The RMA establishes a framework within which the environmental effects of our activities can be identified and properly dealt with. It is expected that people will seek to provide for their own social, economic and cultural well-being and for their health and safety. The RMA does require people to consider the effects of pursuing those interests on the matters outlined in *(a), (b)* and *(c)* above.

Terms such as *natural and physical resources* and the *environment* are defined very broadly in the RMA. Natural and physical resources include land, water, air, soil, minerals, energy, all forms of plants and animals, and all structures. The environment includes people and communities as well as what we usually think of as 'natural' ecosystems. The definition of environment recognises that as humans we value it on our own terms.

The definition of *effect* contained in section 3 of the RMA also shows the legislation's wide-ranging interests. Effect includes:

- any positive or adverse effect
- any temporary or permanent effect
- any past, present or future effect
- any cumulative effect
- any potential effect of high probability
- any potential effect of low probability but with a high potential impact.



Achieving sustainable management requires a number of assumptions. It is generally assumed that future generations will require the same sorts of things we enjoy such as clean beaches, fresh air and quiet neighbourhoods. It is about passing on the stock of such natural and physical resources to the next generation in no worse condition than they are now, and in sufficient quantity to meet future needs. We also need to set benchmarks or 'bottom-lines' to safeguard the life-supporting capacity of our air, land and water. The assumption here is that a certain amount of impact on, or degradation of, the environment can be tolerated. The requirement to avoid, remedy or mitigate adverse effects on the environment provides an opportunity to either prevent those effects, or if this cannot be achieved, reduce the effects to an acceptable and practical minimum.

Example

A company wishes to develop rural land on the coast for a golf course. The beaches along that section of the coast are very popular with the public and are an important area used by local hapū for gathering kaimoana. Streams that support indigenous fish and plant life run through the property. The property also has a number of stands of indigenous lowland forest that are relatively rare.

The RMA expects the company to demonstrate that its proposal will not limit the opportunities available for future generations by, for instance, permanently inhibiting public access along the beach or hapū ability to gather kaimoana. The company might be required to demonstrate how it can avoid loss of public access to the coast by, for instance, handing ownership of a strip of land above the high tide mark to the local council for use as a public reserve. The company might also need to show that any earthworks associated with the golf course would not irreparably damage the streams that run through the area to the extent that they are unable to support hapū using the area to collect kaimoana, or existing habitats for fish and plants. If some sediment is likely to be discharged to local streams as a result of the earthworks, the company might indicate how this adverse effect could be minimised by routing runoff through settling ponds and maintaining riparian vegetation along the stream banks during and after the construction phase. Finally, the company may need to indicate what measures it will take to preserve the stands of bush by, for instance, incorporating them into the design of the golf course.

1.4 What 'sustainable management' is not

The RMA does not intend to prevent progress, innovation, economic growth, or increases in the standard of living. Neither is it a mechanism for balancing the economic or social benefits of a particular proposal against its adverse environmental effects, or for making decisions about the merits of one use of land over those of a potential competitor.

This does not mean that the RMA has been developed without any regard for the economic, social or cultural welfare of New Zealanders; quite the opposite in fact. The RMA requires a focus on the *environmental effects* of activities. *The underlying assumption is that any use, development or subdivision should proceed if there are no adverse environmental effects, or if those effects can be avoided, remedied or mitigated.* The RMA does not provide councils or other decision-makers with the ability to direct investment through regulatory controls.

Example

A company wishes to establish a furniture-making factory in a small New Zealand town. The proposal will create 100 jobs, use locally sourced exotic timber and be of great economic and social benefit to the local community, which suffers from relatively high unemployment. It is not necessary for the company to show how the jobs created will outweigh any negative impact on a competing furniture manufacturer in a nearby town. Neither does the company need to demonstrate how the benefits of the proposal outweigh any adverse environmental effects, such as the effects of noise on neighbouring residential properties or the effects of the discharge of dirty water from the factory into a nearby stream. While the social and economic benefits of the proposal will be considered and are important, the RMA requires the company to demonstrate how it will tackle those adverse *environmental* effects and take measures to prevent or minimise their impact.

The RMA provides an environmentally conscious framework within which people can make their own decisions. It focuses on the *effects* of activities rather than activities themselves, and demands that all methods developed under the RMA must be justified in terms of the environmental effects they seek to address.

1.5 Principles of the Resource Management Act

To help decision-makers and others in achieving the purpose of the RMA – sustainable management – a number of explicit principles are set out in the Act. The principles are set out in three sections of varying importance:

» matters of national importance

» other matters

» Treaty of Waitangi.

These principles must be given appropriate consideration in the day-to-day implementation of the RMA. The full list of principles is given in Appendix 1.

1.5.1 Matters of national importance (section 6)

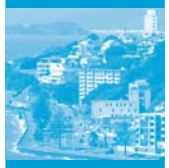
Matters of national importance identify parts of the environment that New Zealanders hold in particularly high regard that must be recognised and provided for, including:

» the natural character of the coastal environment, wetlands, lakes and rivers, and public access to those resources

» outstanding natural features and landscapes

» significant indigenous vegetation and habitats

» the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga



» historic heritage

» recognised customary activities.

> ***Historic heritage*** **means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from archaeological, architectural, cultural, historic, scientific and technological qualities. It includes historic sites, structures, places, and areas; archaeological sites; sites of significance to Māori, including wāhi tapu; and surroundings associated with the natural and physical resources.**

1.5.2 Other matters (section 7)

The RMA specifies a number of other matters that decision-makers must have particular regard to (see Appendix 1). These include:

» kaitiakitanga: the exercise of guardianship by the tāngata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources

» the ethic of stewardship

» the efficient use and development of natural and physical resources

» the efficiency of the end use of electricity

» the maintenance and enhancement of amenity values

» the intrinsic values of ecosystems

» the maintenance and enhancement of the quality of the environment

» any finite characteristics and natural and physical resources

» the protection of the habitat of trout and salmon

» the effects of climate change

» the benefits to be derived from the use and development of renewable energy.

1.5.3 Treaty of Waitangi (section 8)

The RMA requires that those making decisions under the RMA must *take into account* the principles of the Treaty of Waitangi. The Treaty is one of New Zealand's founding documents and establishes the relationship between the Crown and Māori as tāngata whenua. Other recent New Zealand legislation requires that consideration be given to the principles of the Treaty.

The principles of the Treaty of Waitangi are an interpretation of the Treaty's text. Their definition, while continuing to evolve, has been assisted by their consideration by the Court of Appeal and the Waitangi Tribunal. In the broadest sense the principles of the Treaty, to date, have been interpreted as including:

» the right of government to govern and make laws (kawanatanga)

» the right of iwi and hapū to self-management and control of their resources in accordance with their tribal preferences (rangatiratanga)

» the principle of partnership and a duty to act in good faith (partnership)

» the duty on the Crown to actively protect Māori in the use of their resources and taonga (including the provision of redress for past injustices).

The requirement to take into account the principles of the Treaty of Waitangi means that those with statutory functions under the RMA should be informed of, and actively consider, the concerns and needs of tāngata whenua.

Further reading on the principles of the Treaty of Waitangi

Further reading: *Taking into Account the Principles of the Treaty of Waitangi: Ideas for the Implementation of Section 8 Resource Management RMA 1991* published by the Ministry for the Environment in 1993, discusses the principles of the Treaty of Waitangi and their application to resource management. *Kaitiakitanga and Local Government: Tāngata Whenua Participation on Environmental Management*, Office of the Parliamentary Commissioner for the Environment (PCE), 1998, gives an overview of improvements and ongoing difficulties in tāngata whenua participation in RMA processes since an earlier investigation by the PCE in 1992. *Māori Council Engagement Under the Resource Management Act 1991*, Te Puni Kokiri, 2006, provides a more complete view of the ways councils and Māori are working together under the RMA. For more information visit the Treaty of Waitangi website: www.treatyofwaitangi.govt.nz/

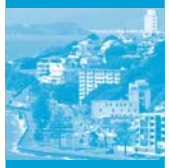
1.5.4 General obligations, duties and restrictions

An important principle underlies the way the RMA defines and allocates the obligations of all New Zealanders: *That those whose activities have the potential to adversely affect the environment in some way should bear the costs of avoiding, remedying or mitigating the consequences of their actions*. In practice, this principle is reflected in the following ways in the RMA:

» In almost all circumstances, the RMA binds the Crown. This differs from previous legislation, which allowed the Crown leeway on some environmental matters that private or public interests did not have.

» A landowner can use land for any purpose unless the RMA, or a plan produced under it, limits use on the basis of the environmental effects an activity would cause.

» Activities in the beds of lakes, rivers and the coastal marine area, the subdivision of land, the taking or use of water, and discharges into the environment are not allowed, unless expressly provided for in a plan or resource consent.



- Existing uses of land, some existing permissions or authorisations established before the enactment of the RMA, and many discharges to air and land enjoy continued protection.
- Every New Zealander has a general obligation to avoid, remedy or mitigate adverse effects on the environment.
- Resource users and developers are responsible for avoiding, remedying or mitigating the environmental effects of their activities. This principle is central to the resource consent process.
- Anyone exercising functions, duties and powers under the RMA is required to avoid unreasonable delay. The RMA actually specifies time periods for processing applications for resource consent, lodging submissions and other processes.

1.5.5 Tāngata whenua involvement in the RMA

Tikanga Māori encompasses a complex system of customs and values to conserve, manage and protect natural and physical resources. In the Māori worldview, all natural and physical elements of the world are related through whakapapa (genealogy) and each is controlled and safeguarded by spiritual beings. All living things have mauri. The protection and maintenance of mauri is essential. Māori concepts and practices such as tapu, rāhui, mana, kawa, kaitiakitanga and mauri can beused to achieve sustainability of resources. Māori environmental management is holistic and incorporates the needs and values of people while recognising the interrelatedness of the natural and physical world.

The RMA provides for tāngata whenua involvement in the management of resources in a number of ways. Decision-makers must:

- recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga (section 6(e))
- recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development (section 6(f))
- recognise and provide for the protection of recognised customary activities (section 6(g))
- have particular regard to kaitiakitanga (section 7(a))
- take into account the principles of the Treaty of Waitangi (section 8 – see section 1.5.3 of this guide).

Recognised customary activities

These are activities carried out in accordance with customary rights orders. Customary rights orders recognise the customary use, a particular activity, or practice that has been carried out in an area of the public foreshore and seabed since 1840. Customary rights orders are made by the Māori Land Court or the High Court.

For more information visit: www.mfe.govt.nz/issues/marine/foreshore-seabed.html

Additionally, tāngata whenua, through iwi authorities, must be consulted during the development of plans and policy statements (see Section 2.2 of this guide). Councils must take into account iwi/hapū management plans, where these have been developed and lodged with the council, when developing policy statements and regional and district plans. To ensure they meet their obligations under the RMA, councils have a responsibility to actively consider the resource management needs and concerns of tāngata whenua when making decisions.

Kaitiakitanga

Kaitiakitanga is central to Māori resource management, and carries an obligation to protect the mauri of a resource. The word 'kaitiaki' is derived from the verb 'tiaki', which means to guard, conserve, nurture, foster or protect. In a simple sense, 'kaitiaki' can be translated as guardian and 'kaitiakitanga' as the act of guardianship.

Mauri

Mauri is the life essence or force that binds the physical and spiritual elements of all life. Everything has mauri, including land, lakes, rivers, air and people. However, it is the actions of people that maintain, enhance or destroy the mauri of a resource.

1.5.6 Community involvement in decision-making

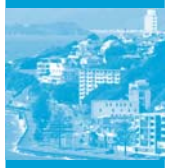
Underlying the RMA are two key principles about the community's involvement in decision-making. These reflect New Zealand's obligations as a signatory to *Agenda 21* in 1992, which states that to improve planning and management systems they should be delegated *to the lowest level of public authority consistent with effective action*. The principles are:

» *That decisions on environmental matters are most appropriately made by the communities directly affected by those decisions*. As detailed later in this section, councils have a key role in implementing the RMA, in close consultation with their communities. Councils are charged with describing and identifying the local environment, according values to the environment, assessing proposals to use resources against those values and monitoring the effects of their plans and decisions.

» *That community participation is vital to effective resource management*. The RMA establishes various mechanisms that enable individuals to influence the decisions of those with statutory functions. Councils rely on local communities to help them identify aspects of the local environment to be valued and protected, and to assess the effects of individual proposals.

1.5.7 Alternatives to regulation

Decision-makers are required to actively consider alternatives to regulation in preparing policy statements and plans. Many people are familiar with the regulatory side of the RMA (eg, the development of rules in plans and the resource consent process), but it is less commonly realised that local authorities pursue a wide range of objectives without using regulatory tools. In doing so, the RMA and its administrators recognise it is not fair for resource users and landowners to bear the entire cost of actions that will benefit the wider community and environment. Often, non-regulatory approaches are funded from general rates, sponsorship or some other contribution from the community.



Examples

Councils may contemplate developing plan rules to preserve stands of indigenous vegetation, wetlands or historic buildings. The rules may require people to apply for resource consent to clear areas of native forest or modify or demolish historic buildings. However, many councils and environmental trusts also provide grant assistance to landowners to fence and covenant forest or supply paint and materials for renovating historic homes and shops. Regional councils and the Landcare Trust provide advice and assistance on sustainable forms of land management in erosion-prone hill country areas. Such programmes can be acceptable, positive and practical alternatives to regulation under the RMA.

The regional policy statements that are produced by regional councils should broadly indicate any non-regulatory approaches they intend to take. Regional and district plans produced by councils may also include any non-regulatory approaches they intend to take, or these can be identified in other council documents. Long term council community plans and the annual plans produced by councils in accordance with the requirements of the *Local Government Act 2002*, may indicate the priorities and levels of funding that will be made available during forthcoming years to support the non-regulatory initiatives.

Opportunities to influence the contents of plans produced under both Acts are explored in some detail in Section 4 of this guide.

1.6 Other environmental legislation

Despite the RMA's all-embracing intentions, it is not New Zealand's only environmental legislation Other legislation also relates to climate change, energy efficiency, land, minerals and other resources, as well as land administered by the Department of Conservation including national parks and reserves.

1.6.1 Land

A large body of both common and statutory laws affects land, for example the *Property Law Act 1952* and *Te Ture Whenua Māori Act/Māori Land Act 1993*.

1.6.2 Land administered by the Department of Conservation

The Department of Conservation was formed in 1987 when the *Conservation Act 1987* was passed. The Conservation Act sets out the roles and responsibilities of the Department including the management of land held under the Conservation Act. The Department of Conservation also manages national parks under the *National Parks Act 1980* and other land under the *Reserves Act 1977*. Waterways within national parks and reserves are managed under the RMA.

If you wish to use land administered by the Department of Conservation for commercial purposes you need to obtain permission from the Department. This permission is called a *concession*.

For more information visit the Department of Conservation's website: www.doc.govt.nz/

1.6.3 Wildlife

If you disturb or threaten wildlife, you may be subject to the provisions of the *Wildlife Act 1953* or the *Marine Mammals Protection Act 1977*, which the Department of Conservation is also responsible for administering along with the *Marine Reserves Act 1971*. Indigenous biodiversity is managed under the RMA.

For more information visit the Department of Conservation's website: www.doc.govt.nz/

1.6.4 Mining

If you want to mine for coal or other minerals the *Crown Minerals Act 1991* will apply. The Crown Minerals Act provides the means by which the Crown allocates rights to the exploitation of mineral resources such as gold, gas and coal. The environmental effects of mining and resource exploration are dealt with under the RMA.

1.6.5 Local government

You may want to influence the way councils allocate resources for environmental projects. Under the *Local Government Act 2002*, many councils pursue a wide variety of environmental initiatives. They may, for instance, establish recycling initiatives, develop work programmes for improving the appearance of town centres, and establish grant programmes for protecting stands of native bush or wetlands. Opportunities to influence such programmes are provided by the annual planning exercises that all councils must undergo, along with the process required to establish *long term council community plans*. These plans set out what type of community people would like to live in and the things they would like to see happen in their community.

The Local Government Act also provides councils with an ability to enact bylaws. Councils can enact bylaws about things such as public health, the use of roads, drainage and sanitation. Councils also usually administer anti-litter bylaws. Under the RMA, district and city councils are also major service providers. They maintain local roading networks, provide rubbish removal and disposal services, and provide and manage libraries, parks, sports fields, and water and wastewater services. Regional councils are responsible for transport planning and providing public passenger transport.

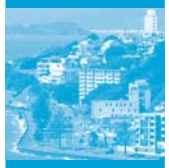
If you seek to establish a bar or nightclub you will need to obtain a licence to sell liquor from the local district or city council, which has responsibilities under the *Sale of Liquor Act 1989*.

Proposals to use public reserves may require permission from the local council. The *Reserves Act 1977* provides them with a statutory basis for managing local parks, reserves and sports grounds.

The Ministry of Health and city and district councils maintain an interest in public environmental health issues through the *Health Act 1956*.

1.6.6 Buildings

If you want to construct a building or other structure you will be subject to the provisions of the *Building Act 2004*. This Act oversees the standard and safety of buildings and their construction. District and city councils administer the Building Act and require all work to comply with relevant building codes.



The *Health and Safety in Employment Act 1992* governs safety in the workplace (including building sites) and is administered by the Department of Labour's Occupational Safety and Health Service.

1.6.7 Fisheries

Taking fish for commercial purposes requires an application to the Ministry of Fisheries under the *Fisheries Act 1996*. *The Māori Fisheries Act 1989* and the *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992* settle claims relating to Māori commercial fishing rights and provide for customary fishing rights and Māori participation in managing and conserving New Zealand's fisheries.

1.6.8 Timber

Proposals to mill indigenous timber on private land may, in addition to possibly requiring resource consents from councils under the RMA, require the approval of the Ministry of Agriculture and Forestry under the provisions of the *Forests Act 1949*.

1.6.9 Climate change

The *Climate Change Response Act 2002* puts in place a legal framework to allow New Zealand to ratify the Kyoto Protocol and to meet its obligations under the United Nations Framework Convention on Climate Change.

1.6.10 Other statutes

The *Ozone Layer Protection Act 1996* helps New Zealand meet its international commitments to reducing the use of ozone-depleting substances. The *Antarctica (Environmental Protection) Act 1994* looks after New Zealand's Ross Dependency, while the *New Zealand Nuclear Free Zone, Disarmament and Arms Control Act 1987* restricts the movement of nuclear weapons in the country.

The *Energy Efficiency and Conservation Act 2000* is the legislative basis in New Zealand for promoting energy efficiency, energy conservation and renewable energy. The Act established the Energy Efficiency and Conservation Authority (EECA).

Many iwi have Treaty of Waitangi claims settlement Acts which include specific input into conservation and resource management.

The *Hazardous Substances and New Organisms Act 1996* details how to assess the effects associated with the importation, manufacture and release of such materials. The *Biosecurity Act 1993* controls the spread of pests and weeds that have already gained a foothold in New Zealand.

The *Historic Places Act 1993* aims to promote the identification, protection, preservation and conservation of the historical and cultural heritage of New Zealand. The New Zealand Historic Places Trust is the agency who seeks to protect, preserve and conserve New Zealand's historical and cultural heritage.

2 Who, How and What

2.1 The decision-makers

One of the RMA's underlying principles is that decision-making is best left to those who are directly affected by the results of those decisions. It therefore devolves the authority for making decisions to the most appropriate level. Where there is some advantage in setting consistent policy at a national level, this role lies with the Minister for the Environment and the Minister of Conservation. Decisions that directly impact on local communities are made by councils, which, under the RMA, are called *local authorities*. Local authorities are responsible for implementing the bulk of the RMA, and are divided into two tiers (district/city and regional councils) for this purpose. A map of the administrative boundaries of New Zealand's local authorities is provided in Appendix 2.

2.1.1 District and city councils

There are 73 *district and city councils* in New Zealand, including *unitary authorities* (which are districts with regional functions – see Section 2.1.3). These are collectively referred to as *territorial authorities* in the RMA and include authorities as diverse as the Wellington City Council and the Kaipara District Council. Under the RMA, territorial authorities are primarily responsible for controlling:

» the effects of land-use (including hazardous substances, natural hazards and indigenous biodiversity)

» noise

» the effects of activities on the surface of lakes and rivers.

Subdivision can also be controlled under the RMA, though only to the extent that it forms a method of carrying out the functions specified above.

To enable them to carry out these functions, territorial and unitary authorities are charged with preparing district plans, issuing resource consents, taking enforcement action, and monitoring the state of the environment and the effects of their own decisions.

2.1.2 Regional councils

There are 12 *regional councils* in New Zealand including, for example, the Auckland and Otago Regional Councils, and Environment Bay of Plenty. Regional councils are responsible for controlling:

» the taking, use, damming, and diversion of surface water, groundwater and geothermal water

» the discharge of contaminants to land, air or water

» the effects of activities in the coastal marine area (together with the Minister of Conservation)

» the introduction of plants into water bodies

» maintaining indigenous biodiversity

» land-use for matters such as soil conservation, maintaining and enhancing ecosystems in water bodies, water quality and quantity, and controlling natural hazards and hazardous substances

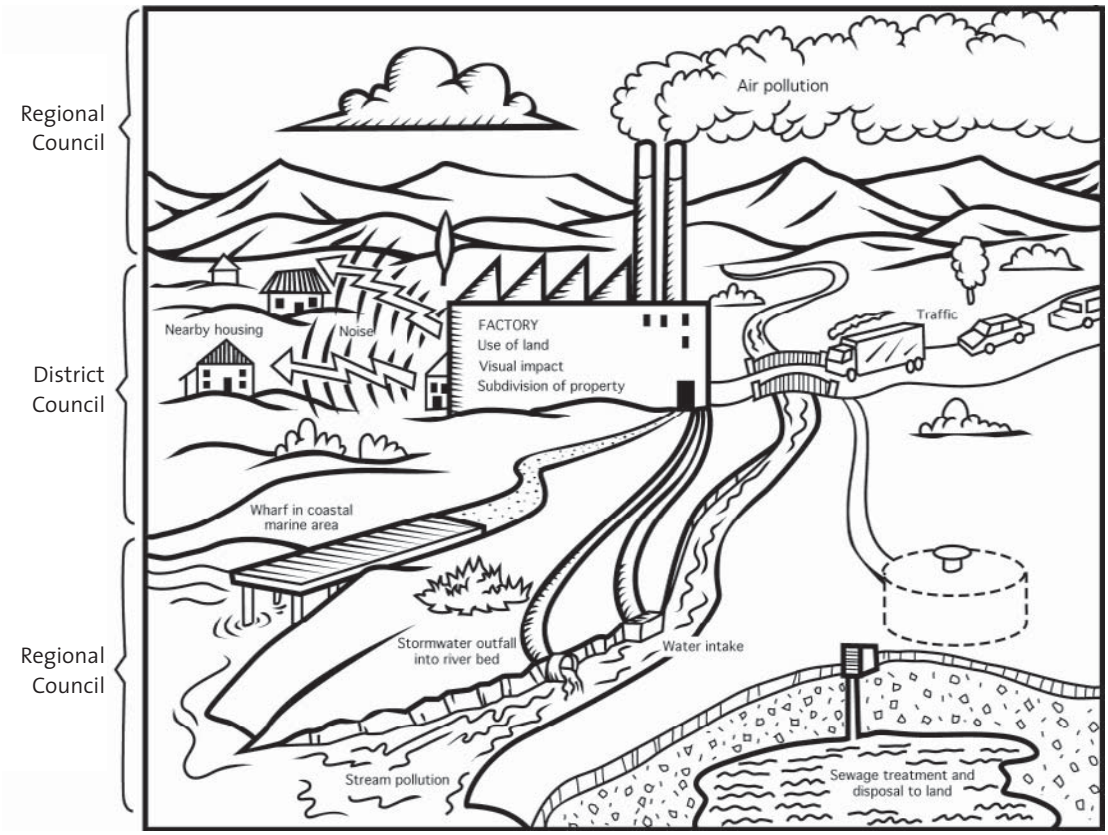
» the strategic integration of infrastructure with land-use.

Regional councils are responsible for preparing regional policy statements and regional plans, issuing resource consents, taking enforcement action, and monitoring the state of the environment and the effect of their own decisions, all within the context of their functions under the RMA.

Example

If a new factory was proposed, the local district or city council would, under the RMA, be concerned with assessing the effects of the proposal on traffic volumes, its visual impact, and the effects on neighbouring residents, including noise. The regional council would be primarily concerned about the effects of any discharges from the factory on air and water quality (see Figure 1).

Figure 1: Effects of discharges



Under the RMA, local authority responsibilities overlap to enable them to establish the most appropriate arrangement. For example, both regional and district/city councils are responsible for controlling land to manage hazardous substances and natural hazards.

Local authorities can transfer some of their RMA functions to public authorities such as city and district councils, iwi authorities, or government departments – although to date few have chosen to do so. Councils can delegate their functions to an internal committee, community boards, officers or commissioners. Most councils make special committees responsible for hearing and deciding consent applications and submissions on policy statements and plans. Most also allocate the power to make decisions on less significant resource consents to delegated officers.

Local authorities can also enter into joint management agreements with public authorities, iwi authorities and groups that represent hapū for the purpose of the RMA. A joint management agreement may provide for the joint performance or exercise of any function of the council and may apply to the whole or part of a district or region.

2.1.3 Unitary authorities

The Chatham Islands Council, and the Gisborne, Marlborough and Tasman District Councils and Nelson City Council have the functions of both regional councils and territorial authorities under the RMA. They are known as *unitary authorities*.

2.1.4 The Minister of Conservation

The *Minister of Conservation* has statutory responsibilities for managing the coastal marine area. This area extends from the mean high water springs mark to the limit of the territorial sea (see Figure 2). The Minister is responsible for preparing the *New Zealand Coastal Policy Statement* and shares an administrative role with regional councils on particularly significant developments in the coastal marine area. The Department of Conservation furthers the Minister's interests.

Appendix 3 illustrates the administrative boundaries of the Department's local conservancy offices. Separate to the RMA, and under the provisions of the *Conservation Act 1987*, the Department administers land under various acts, and assumes the role of a conservation advocate.

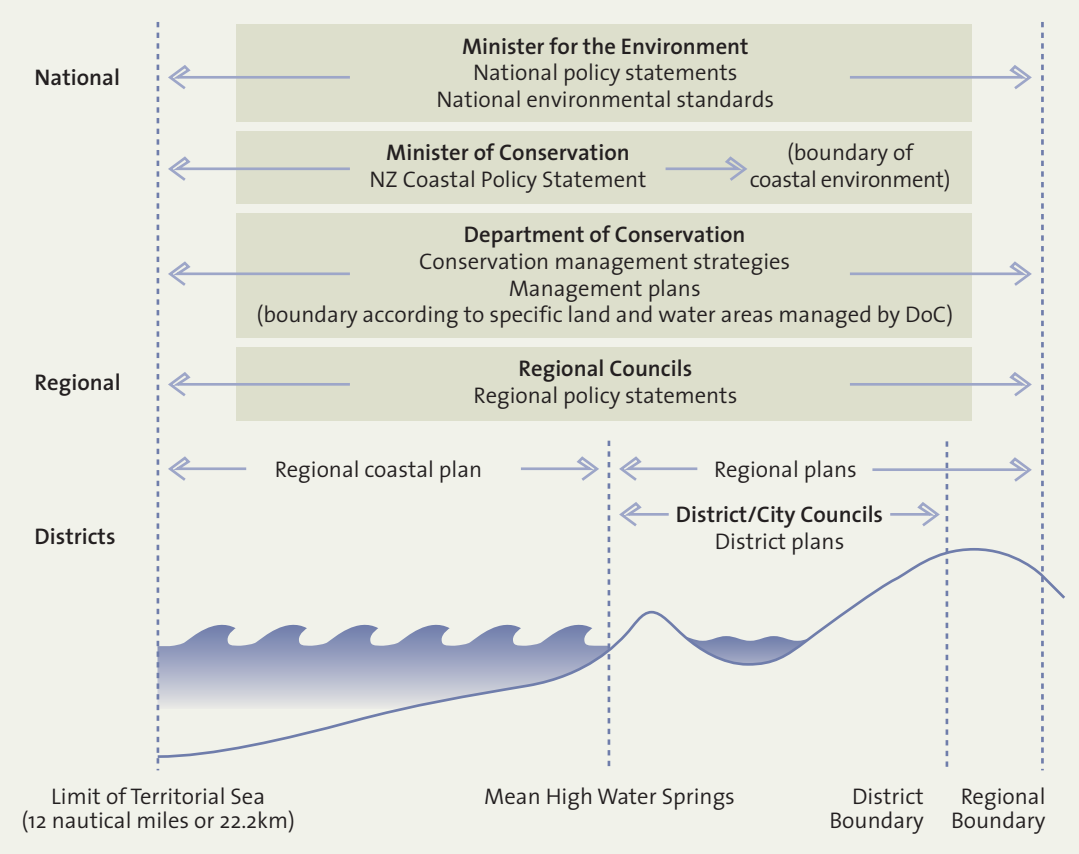
2.1.5 The Minister for the Environment

The *Minister for the Environment* maintains an active overview and monitoring role of the implementation of the RMA. The Minister has some direct areas of responsibility which include:

- making recommendations on the issue of national policy statements, national environmental standards and water conservation orders
- the 'call-in' of proposals of national significance
- making recommendations for the approval of applicants as requiring authorities and heritage protection authorities.

The Minister is also able to investigate a local authority's performance and provide recommendations to the local authority for action, direct local authorities to prepare plan changes/variations or parts of plans to address resource management issues, appoint people to carry out the duties of councils where councils are not performing their functions properly, make grants and loans, and require councils and other authorities to supply information relating to their activities. The Ministry for the Environment is responsible for helping the Minister in carrying out their functions under the RMA.

Figure 2: Areas of management responsibility (policy statements and plans)



2.1.6 The Environment Court

The Environment Court is a specialist court established by the RMA which has jurisdiction over environmental and resource management matters. It hears appeals and references on the decisions made by councils, and considers applications for declarations and enforcement orders. Its Judges sit in the District Court to hear prosecutions under the RMA. The Environment Court has the powers of a District Court and the Ministry of Justice delivers administrative support to it. The Court's membership is comprised of Environment Judges (who also are warranted as District Court Judges) and Environment Commissioners.

As well as fulfilling a primary function as a court, the Environment Court has a pivotal role in the resource management process. The RMA confers primary powers on local authorities and the Court. In general, policies are locally generated and are interpreted and applied by the Court.

The Court has the power to order changes to policy statements or plans, overturn the decisions of councils on applications for resource consent, and award costs in favour of one or other of the parties involved. When considering appeals to decisions on resource consent applications, private plan changes and notices of requirement, the Environment Court must have regard to the decision that is the subject of the appeal. A right of appeal against Environment Court decisions, on points of law only, may be heard in the High Court. Generally the RMA prevents anyone seeking a judicial review when a right of appeal is available.

2.2 The plans

To address their responsibilities under the RMA, regional councils and the Minister of Conservation have the ability to prepare and implement *policy statements*. Regional councils may also prepare and implement *regional plans*, and district councils must prepare and implement *district plans*. The Minister for the Environment also has the ability to prepare and implement national policy statements and national environmental standards.

Policy statements and plans set out the requirements for people who wish to carry out activities, set up a business, or build something. They may also set out other, non-regulatory, approaches that councils will take to deal with environmental issues. Because plans and policy statements can impact on people's day-to-day activities and expectations, agencies preparing these documents must consult with members of the public who may be affected.

The different types of policy statements and plans are described below. How these are prepared, and your opportunities to influence their contents, are described in Section 4 of this guide.

2.2.1 National environmental standards

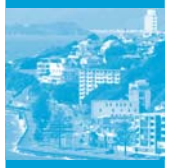
The RMA enables the Minister for the Environment to prepare *national environmental standards* (NES). These standards have the force of regulations and are binding on local authorities. Local authorities cannot grant resource consents that would breach the standards and cannot impose stricter requirements through rules or resource consents (unless the NES says they may). However, new standards will not affect existing resource consents. They can be established for any of a number of matters, including the disposal of hazardous wastes or minimum water flows in rivers or subdivisions. Public involvement is required in developing such standards and to achieve this, a report and recommendations on particular proposals to establish standards must be publicly notified. There is currently only one set of national environmental standards, those recently developed for air quality and toxics. The Ministry for the Environment is currently looking at other potential standards.

2.2.2 New Zealand Coastal Policy Statement

The RMA requires the Minister of Conservation to prepare a coastal policy statement for New Zealand. The *New Zealand Coastal Policy Statement* (NZCPS) came into force on 5 May 1994 and guides all coastal management. It sets out a series of general principles for the sustainable management of New Zealand's coastal environment and national priorities for the preservation of its natural character. It directs how activities in the coastal marine area (particularly those with significant or irreversible effects) must be dealt with in regional coastal plans, and indicates how tāngata whenua values in the coastal environment should be protected. Review of the NZCPS began in 2002.

2.2.3 National policy statements

When deemed necessary, the Minister for the Environment can issue *national policy statements* to guide local authorities on matters of national significance. Statements might be issued where, for instance, a new technology or activity has a potentially significant environmental impact across the country as a whole. Proposed national policy statements must be advertised for public input, and the Minister can appoint a board of inquiry to investigate and report on the proposal. Anyone may make a submission on a draft national policy statement. Once approved, local authorities must ensure



their own policy statements and plans give effect to a national policy statement, including the New Zealand Coastal Policy Statement, and make public their decisions on the actions they propose to take. To date, no national policy statements (other than the New Zealand Coastal Policy Statement) have been prepared.

2.2.4 Regional policy statements

The RMA also requires each regional council to prepare a *regional policy statement*, which provides an overview of the region's resource management issues and facilitates an integrated approach to dealing with those issues. The regional policy statements establish a directional framework for regional and district plans. Regional policy statements must give effect to national policy statements (see Section 2.2.3 of this guide). Regional councils must also take into account any planning documents prepared by iwi authorities. All regional councils now have operative regional policy statements.

Example

The *Regional Policy Statement* for Taranaki was made operative by the Taranaki Regional Council on 1 September 1994. The statement provides a description of the region's physical environment, population and economy. It then goes on to describe the region's significant resource management issues, including the contamination of water, the effects of land-use, subdivision and development on the coastal environment, and matters of significance to iwi in the way land is managed. It sets out the Council's expectations for the way these and other issues will be addressed, through the establishment of objectives, policies and methods of implementation, and describes how the statement's intentions will be monitored and reviewed.

The Resource Management Act requires regional councils to begin a review of their regional policy statements no later than 10 years after the statement became operative. Many regional councils are now reviewing their regional policy statements. These new policy statements are likely to be more specific and directive as district and city council plans must now give effect to regional policy statements.

2.2.5 Regional plans

The RMA allows regional councils to prepare *regional plans* to address any issue relating to their functions under the RMA. Regional plans may be produced as and when the need arises. To reflect the importance that New Zealanders attach to the coast, regional councils are obliged to produce a regional coastal plan for the entire coastal marine area under their jurisdiction. All regional councils have therefore prepared regional coastal plans, which are now either operative or nearly operative.

For other parts of the environment, most regional councils have chosen to prepare a suite of documents under the RMA, relating to their various functions. Each plan describes the significant resource management issues facing a particular area or resource within the region, and sets out objectives, policies and rules to address these issues. The information that must be submitted with applications for resource consents is specified, and the plans also outline the environmental results that are anticipated from their implementation. Regional councils must ensure their plans give effect to any national policy statements including the NZCPS, and to regional policy statements. Plans must not be inconsistent with any other regional plans for the region and must also take into account planning documents prepared by iwi authorities (eg, iwi/hapū management plans).

As with district plans, regional plans have a lifespan of 10 years. Most regional councils have assumed responsibility for regional planning documents prepared under previous legislation. They include such instruments as water classifications, general authorisations and certain types of bylaws. Under the RMA, these are known as transitional regional plans, and continue to have legal force before they are replaced by operative regional plans prepared under the RMA. Most regional councils now have operative regional plans and many are starting their 10 year reviews.

Example

The Wellington Regional Council prepared a suite of five regional plans to address its functions under the RMA. These are:

- **Regional Coastal Plan**
- **Regional Plan for Discharges to Land**
- **Regional Freshwater Plan**
- **Regional Soil Plan**
- **Regional Air Quality Management Plan.**

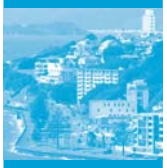
The Regional Air Quality Management Plan tackles such matters as discharges of contaminants to air from abrasive blasting, the flaring of hydrocarbons from oil exploration platforms, and the generation of dust at construction sites.

The plan then sets out objectives and policies that address these and other potentially adverse effects. The plan establishes a series of methods by which its objectives will be pursued. Standards for discharges from specific activities are set. Discharges unable to comply with these standards will require a resource consent. The plan describes what type of resource consent application will be required in any particular circumstance, the information that will need to accompany such applications, and the criteria against which such applications will be assessed.

The RMA enables councils to work together to prepare *combined plans*, where the cross-boundary nature of a particular issue demands it. Otherwise councils can consider preparing such plans jointly at any other stage and for any other purpose. Carterton, Masterton and South Wairarapa have prepared the *South Wairarapa Combined District Plan*. Other examples include the four unitary authorities (see Section 2.1.3) that have sought to comprehensively address all their functions, both regional and territorial, under the RMA with combined plans.

2.2.6 District plans

The RMA requires district and city councils to prepare *district plans* for all of the area for which they are responsible. District plans help district and city councils carry out their functions under the RMA and must give effect to regional policy statements. Each plan describes the district's significant resource management issues, and sets out objectives, policies and rules to address these issues. The information that must be submitted with applications for resource consent is specified, and the plans also outline the environmental results that are anticipated from their implementation. District plans must give effect to any national policy statement including the New Zealand Coastal Policy



Statement, and give effect to regional policy statements. District plans must not be inconsistent with any regional plans. District and city councils must also take into account any planning documents prepared by iwi authorities (eg, iwi/hapū management plans) where these have a bearing on the resource management issues of the district.

Under the RMA, district plans have a life of 10 years. After this time they must be reviewed to keep pace with the changing environment. However, changes to district plans can be made at any time within that period.

Under previous legislation, district and city councils were required to produce what were known as 'district schemes'. Although they were developed in a way similar to district plans, the subjects they covered reflected the focus of that legislation which was quite different to the RMA. It was therefore necessary to replace district schemes once the RMA was enacted. This has been a gradual process as preparing district plans can take more than three years. In the interim, district schemes have been given the status of transitional district plans, and continue to carry legal weight until district plans become operative. Most district plans are now fully operative, and many councils are embarking on their 'second generation' plans.

Example

The Wellington City District Plan has been prepared under the RMA. It covers the entire area administered by the Wellington City Council. The plan sets out the City Council's interpretation of the significant resource management issues facing Wellington. These include:

- **maintaining the quality of residential environments**
- **maintaining and enhancing the quality of the natural environment**
- **reducing the risks associated with natural hazards.**

The plan then sets out objectives and policies that address these and other issues. For example, the plan includes as an objective *the maintenance and enhancement of residential areas and identified areas of special streetscape or townscape character*. Policies to achieve this objective include:

- **controlling the siting, scale and intensity of new residential development to reflect the differences between older and more recent suburban areas**
- **maintaining the special character of identified residential character areas.**

The plan establishes a series of methods for pursuing the plan's objectives. The means to achieve this objective include imposing rules for development in such areas and creating design guides for particularly important parts of the townscape.

Now the plan is operative, it replaces the district schemes developed under previous legislation by the Wellington City Council and now-defunct local authorities such as Tawa Borough. Before the plan became operative, an applicant had to look at both the transitional and proposed plans, which were both considered in the decision-making process. The further a proposed plan has progressed through the RMA's process, the greater the weight given to it when decisions are made.

3 Understanding the Resource Consent Process

3.1 Introduction

Resource consents are the most familiar and commonly recognised aspect of the RMA. Resource consents are permission to use or develop a natural or physical resource and/or carry out an activity that affects the environment. They are obtained from regional, district and city councils or the Department of Conservation which, when carrying out this function, are known as *consent authorities*.

Granting of resource consents is a process for consent authorities to assure themselves, the community and the applicant that the activity in question can proceed provided any adverse effects on the environment are avoided, remedied or mitigated to an acceptable level. According to the Ministry for the Environment's *Survey of Local Authorities 2003/04*, approximately 55,000 resource consents were processed by consent authorities during the 2003/04 financial year.

Regional and district plans indicate whether applications for resource consent will be required in particular circumstances and, if so, what information should be submitted to support them. All applications must be accompanied by an *assessment of environmental effects*. Conditions may be attached to a resource consent to avoid, remedy or mitigate any adverse effects associated with the activity in question.

Applications for resource consent are processed by consent authorities as either *notified* (either publicly though the newspaper and notices sent to affected parties, or in a more limited fashion with notices only being served on affected parties) or *non-notified*. Applicants may be asked by the consent authority to seek *written approval* for an activity from people that it thinks are *affected parties*. Anyone can make a *submission* where an application for resource consent has been notified to the public generally. In some cases, the council will only notify those people that it thinks are affected parties. In these cases, only those people who are directly notified can make a submission. This is also known as *limited notification*. The RMA sets out the procedures for making applications and submissions, and seeking written approvals. This section gives a detailed description of these processes and the terms mentioned in italics.

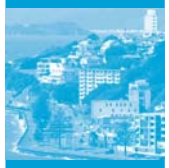
There are basically four stages involved in assessing the effects of your activities:

» *Pre-application:* The process of determining whether you will need to apply for a resource consent (see Section 3.2 of this guide).

» *Making an application:* The process of consulting with affected parties, preparing an assessment of environmental effects, and submitting a completed application for resource consent to a consent authority (see Section 3.3).

» *Reaching a decision:* The procedures that consent authorities use in considering applications for resource consent (see Section 3.4).

» *After the decision:* Your obligations once a resource consent has been granted (see Section 3.5).



If you wish to go through these steps yourself, helpful information is included in this guide in Sections 3.2 to 3.5 or see www.rma.govt.nz/ Another alternative is to seek help from a professional (eg, a planning consultant or resource management lawyer).

The key to assessing the effects of your proposal is to see the process as an integral part of the design of your project, rather than a bureaucratic obstacle to be overcome at the last moment. Early planning, consultation and scoping out of requirements under the RMA can help you refine your proposal. If you are seeking to establish a business, these scoping exercises are as important as the market research you will be undertaking. Such an approach will help you avoid unexpected delays, difficulties and costs, and give you a stronger sense of control over the process.

Further information on the preparation of assessments of environmental effects can be found in *A Guide to Preparing a Basic Assessment of Environmental Effects*, Ministry for the Environment.

3.2 Pre-application: Where to begin

3.2.1 Doing your homework

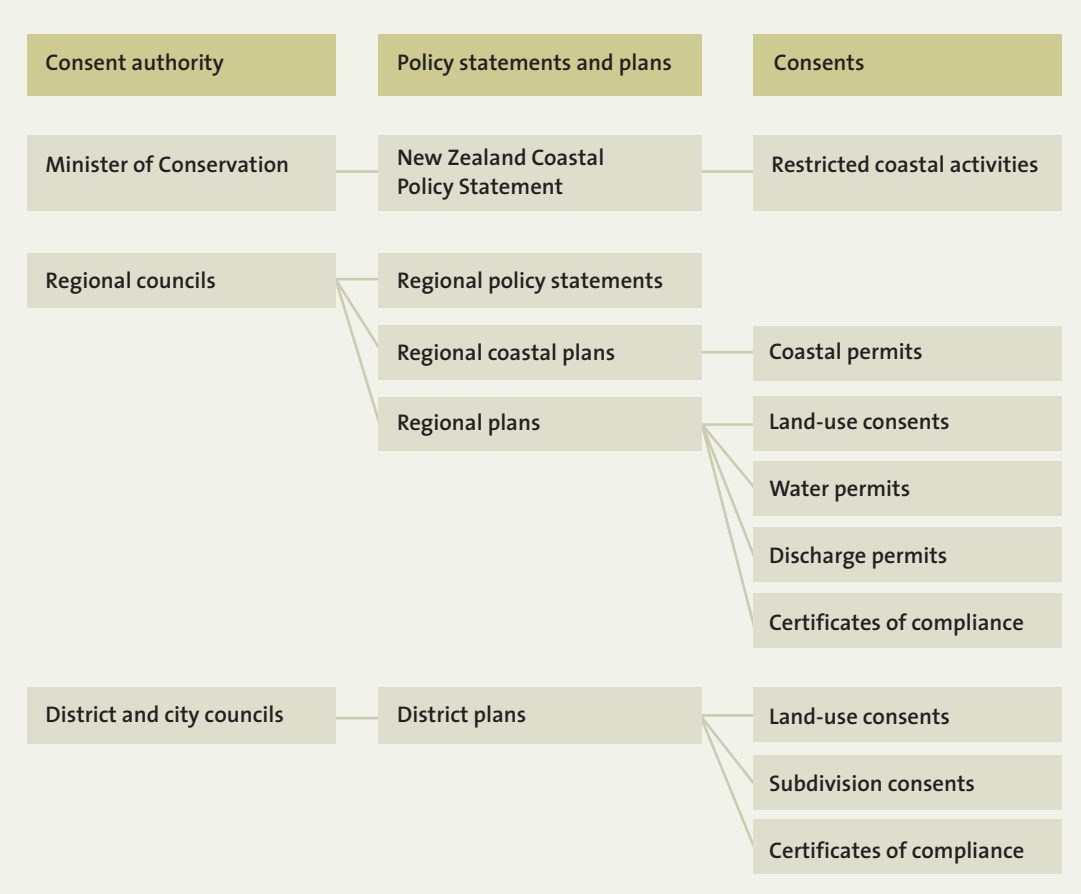
One of the most important relationships you can develop during this process is with the relevant consent authority (council). To assist the consent authority in helping you determine your requirements, you should first develop an understanding of the environmental effects of your proposal. It will also help if you can identify a site or range of site options for your proposal before approaching the consent authority. Try to identify and write down the likely effects of your proposal on neighbours and any obvious features in the vicinity, such as roads, streams, rivers, houses, or the coast, and what you might be able to do to deal with those impacts. Once you have a preliminary outline of what you intend to do and how it will affect the environment, call or drop in to the relevant council offices to discuss its requirements. Note however that some consent authorities may charge for lengthy discussions. Most councils have useful information on their websites including electronic copies of their district or regional plans and the relevant application forms, or for more information and useful links see www.rma.govt.nz/

3.2.2 Approaching the right consent authority

You will need to approach either the local district/city council or the regional council or sometimes both. Ask to speak to someone from the division that deals with resource consent applications. You should approach both the regional council and the local conservancy office of the Department of Conservation if you are proposing to undertake an activity on the coast or in an area administered by the Department of Conservation. Whoever you speak to should also be able to direct you to any other consent authority that may have an interest in your proposal.

Figure 3 on page 26 describes the different types of resource consents and the consent authorities responsible for issuing them.

Figure 3: Consent authorities and the resource consents they are responsible for issuing



To help you identify the appropriate consent authorities, maps of the areas which councils and the Department of Conservation are responsible for administering are provided in Appendices 2 and 3.

There are different types of resource consents. Table 1 below lists the different types of resource consents and gives examples of when resource consents might be required.

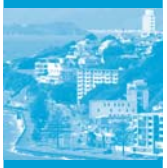


Table 1: Consent types

Consent type	Examples
Land-use consents	To erect a building. To convert a garage in a residential neighbourhood into a shop. To establish papakainga housing.
Subdivision consents	To divide a property into two or more new titles, using fee simple or unit title mechanisms.
Coastal permits	To build a wharf on the coast below the mean high water springs mark. To discharge stormwater into coastal waters.
Water permits	To take water from a stream for an irrigation scheme. To build a dam in the bed of a river.
Discharge permits	To discharge stormwater from a service station through a pipe directly into a lake. To discharge exhaust fumes from a wood-curing kiln into the air.

3.2.3 Talking to the consent authority

Contact with staff from the consent authority enables you to describe your proposal and become familiar with the plans that will govern your activity. The council will be able to provide information on RMA matters for you to become familiar with. Talking with the council can help avoid misapprehensions and confusion, and allow any applications for resource consent to be dealt with quickly and efficiently. Record who you have spoken to, and if possible, obtain a business card for future reference. If a meeting is not possible then at the very least a phone call is highly recommended.

3.2.4 Establishing the consent authority's requirements

In discussions with consent authority staff, or through reading the relevant district or regional plan, you should find out:

» The provisions in the relevant plan(s) that relate to your proposal. (An indication of the types of plans that consent authorities produce and the matters they cover is provided in Figures 2 and 3.)

» The status of your proposal. The plans will indicate whether your proposal is permitted or is a *controlled, restricted discretionary, discretionary, non-complying* or *prohibited activity*. Not all activities will require a consent, but even permitted activities are often defined by their ability to comply with certain standards or conditions. You may be able to modify your proposal so a consent is not required. The different types of activity are outlined in Table 2 on page 28.

» The likely success of your proposal. It may be that your proposal is inappropriate in the location you have chosen. You can save frustration and expense if you can establish whether the proposal is a 'goer' in the eyes of the consent authority.

» What, if any, resource consents you may require. The different types of consent are outlined in Table 1 above. Read the plan carefully to establish what conditions apply.

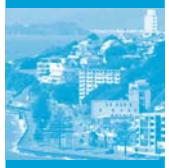
» If you find that a plan expressly prohibits you from applying for a resource consent for a certain activity, the only way to pursue your proposal is to apply for a plan change.

» If it is established that a resource consent will be required, find out what information you will need to support your application. Try and get an opinion on who the consent authority is likely to consider an affected party and if the council has a standard written approval form if you decide to seek approvals from them. Try to get an opinion on whether the council is likely to notify the application, and if so, whether to affected parties only (limited notification) or to the public generally. Establish the council's fees for processing your application.

» Obtain from the council copies of the information requirements specified in the relevant plan(s), application forms, and any guidance on preparing applications, consultation and assessments of environmental effects.

Table 2: Types of activity and requirements

Activity type	Consent required?	Type of controls (indicative only)
Permitted	No	Must comply with performance conditions relating to such matters as quality of discharge, noise, light output and hours of operation.
Controlled	Yes	Must comply with standards and terms specified in plan. Applications cannot be turned down by the consent authority; however, conditions may be imposed. Plan specifies over what matters the consent authority will exercise control.
Restricted discretionary	Yes	Must comply with standards and terms specified in plan. Applications may be turned down by the consent authority; alternatively conditions may be attached to granting of consent. Plan specifies the matters (or 'assessment criteria') that the consent authority will have regard to in considering the application.
Discretionary	Yes	Must comply with standards and terms specified in plan. Applications may be turned down by the consent authority; alternatively conditions may be attached to granting of consent. All the environmental effects of the proposal will be considered, although plans usually provide some guidance through listing assessment criteria.
Non-complying	Yes	Activities not specifically provided for in the plan. The consent authority must be satisfied that the granting of consent will not be contrary to objectives or policies in the plan or that the adverse effects on the environment will be minor. Applications may be turned down by the consent authority; alternatively conditions may be attached to the granting of consent. All the environmental effects of the proposal will be considered.
Prohibited	No	Under no circumstances can an application be made.



How plans work

Generally, most district plans divide a district into activity areas or zones (eg, residential, rural, business). Rules for activities are usually specified within each zone or activity area. The status of those activities and the conditions, standards, terms and assessment criteria that relate to them are spelt out. If you know where you propose to carry out an activity, you can identify the site on the planning maps, and establish the requirements for the relevant zone on that basis. General rules relating to historic buildings and earthworks (amongst other things) usually apply across the entire district. It is important to establish whether these are relevant.

Regional plans usually deal with each issue or activity in turn (eg, damming rivers, taking water or discharges from industrial facilities). Rules tend to apply across the entire region, although the requirements may alter depending on the presence of sensitive local environments, such as a river or highly erosive soils. Again, conditions, standards, terms and assessment criteria are set out to help you find out the status of your activity and how applications for resource consent will be dealt with by the regional council.

Both regional and district plans also set out the information that must be provided with applications for resource consent. The plan may also say whether applications for particular activities will be publicly notified. If you are unsure about the reason for a provision in a plan you can refer to the issue (if stated), objective and policy to which that provision relates. This will enable you to gain a fuller understanding of the consent authority's intentions, and consider your proposal in that context.

3.2.5 Confirming the status of the activity

You may establish that what you propose to do is a permitted activity that does not require a resource consent. In this instance, you can ask the consent authority to supply you with a *certificate of compliance*. This means your activity fully complies with the relevant plans. It can also be useful when selling property or obtaining finance. Crucially, a certificate of compliance can also protect you from future changes to the plan as long as no changes to the activity take place. Consent authorities may charge a fee for issuing a certificate of compliance: you should establish that fee before proceeding.

You may request a *project information memorandum (PIM)*, which details the consent authority's requirements for a particular proposal. This will provide further information for you to determine whether your activities will require a resource consent. You may also request a *land information memorandum* (LIM), under the provisions of the *Local Government Official Information and Meetings Act 1987*, which answers important questions about a property and any associated buildings pursuant to the relevant provisions of the *Building Act 2004*.

3.2.6 Existing use rights

If you are planning to carry out a land-use activity that is existing, or you wish to make small changes to an existing activity (such as purchase a shop and change the items the shop sells), it may be that the activity does not require consent as it holds existing use rights. You can apply to your territorial authority for a certificate confirming *existing use rights* under section 139A of the RMA. This will enable the council to confirm whether or not it considers existing use rights applicable. Fees are

likely to apply for this and you will need to provide detailed information demonstrating the use to which the property has been put. Alternatively, you can apply to the Environment Court to make a declaration that existing use rights apply.

To show existing use rights apply, you must prove to the council that the activity was legally established, that the effects generated will be the same or similar in character, intensity and scale to those which existed when the activity was established, and that the activity has been continuous. However, if your activity relates to one that is controlled by a regional council's *regional plan*, existing use rights have a limited life once the rule controlling it in the regional plan becomes *operative*. You may require a resource consent (to be applied for within six months) of the operative plan date.

If you are unsure of these matters, talk to the council or a professional such as a planning consultant or resource management lawyer for advice.

3.2.7 Complying with other legislation

Depending on the nature of the proposal, other legislative requirements can apply, for example:

» The physical construction or alteration of buildings or structures may require a *building consent* under the *Building Act 2004* from the city or district council. Many construction jobs will require a building consent but not a resource consent. Obtaining a building consent does not in any way guarantee you will automatically be granted a resource consent, if you require one.

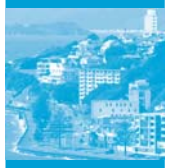
» Any arrangements for connection to water supplies or the disposal of sewage, trade wastes or stormwater into a district- or city council-operated system will generally require *approval* from the relevant authority.

» Activities proposed to be undertaken in council owned and managed reserves may require a *licence* under the *Reserves Act 1977*.

» Most district plans prepared under the RMA contain provisions to protect historic buildings, places, wāhi tapu and archaeological sites. However, any activity that may disturb, damage, destroy or otherwise alter an archaeological site may require separate approval from the New Zealand Historic Places Trust under the *Historic Places Act 1993*.

» Dividing property into unit titles must be undertaken in accordance with the *Unit Titles Act 1972*.

» Activities based in an area managed by the Department of Conservation (such as a national park or a scenic reserve) are likely to require a *concession* from the Department under the *Conservation Act 1987*.



3.3 Making an application

3.3.1 Consulting effectively

In identifying the potential effects of your proposed activity, it can be useful to talk to people who may be interested in, or affected by your activity. The RMA makes it clear there is no duty to consult any person about an application for resource consent. However, talking to those people interested in, or potentially affected by, your proposal can help you identify potential effects and prepare a complete assessment of environmental effects to accompany your application for resource consent. If you do consult people in preparing your application for resource consent, you must also include a statement in your assessment of environmental effects that identifies those people affected by the proposal, how you have consulted them, and detail any response to their views. Such a statement will help the consent authority determine whether or not to notify the application.

Your initial discussions with the consent authority should help you establish whether there are any potentially affected parties and who you may want to consult. While consultation is not mandatory under the RMA, the consent authority may suggest you consult with adjacent landowners and occupiers, local iwi or tāngata whenua groups, the Department of Conservation, community groups, special interest groups, the Historic Places Trust, utility providers (eg, Transit New Zealand), recreational and environmental groups, and any other individuals or organisations that may be affected by your proposal.

Example

The number of people or organisations you may consult with will depend on the complexity and impact of your proposal. An application before a district council to extend a house may potentially affect your neighbour and you may choose to consult only with your neighbour, before or as part of, seeking their approval as an affected party.

An application before a regional council to build a road bridge over an environmentally sensitive river that is valued by local iwi and used extensively for recreational fishing may benefit from consultation with local iwi, the local area office of the Department of Conservation, the regional office of Fish and Game New Zealand, angling and jetboat clubs, and the local branch of the Royal Forest and Bird Protection Society to help you identify potential effects. The council may have identified a number of affected parties and you may want to approach these people to gain their written approvals.

Consultation is more than just merely telling, presenting or notifying people about your proposal. A considerable body of case law has developed on the elements of good consultation. Essentially, you must be prepared to consult without having first made up your mind about every aspect of your proposal. Consultation should be seen as an opportunity for you to explain what you propose to do and to enable people to determine how it may affect them. They may ask you to modify your proposal to address their specific concerns, and for this reason, it is important to maintain an open mind. You must provide people with enough information to make a rational assessment, and give them adequate time to respond. You should consider preparing some written material or sketches of the proposal so it will seem 'real' to the people you are asking to respond. If need be, you should supply them with any further information they may request.

People are likely to be more supportive of your proposal if they feel you have made a genuine and meaningful effort to take their views into account. Such an approach can help you avoid considerable time, cost and anguish later on. Consultation can ensure that all issues are identified, therefore providing a platform for sorting out potential problems before the formal application process.

Affected party approvals

If the council considers the environmental effects of your resource consent application will be no more than minor, and you have obtained the written approval of all those it considers likely to be affected, it is likely the council will not notify the application.

If you are requesting the written approval of your proposal from a person, they will need to have the opportunity to view the resource consent application, and must sign a form and plans showing they understand the proposal and how it might affect them. Many consent authorities have developed forms for this purpose. These can be attached to the application.

Limited notification

If the council considers the environmental effects of your resource consent application will be no more than minor, but you have not obtained the written approval of all those it considers likely to be affected, the council may serve notice of the application on only those people it considers may be affected, rather than publicly notifying the application. In this case, the council will serve notice on all the identified affected parties, even if some have provided written approval to the application, but details of the application will not be advertised in the local newspaper.

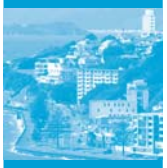
3.3.2 Consulting tāngata whenua

The key focus for councils is to identify and provide for the specific concerns of tāngata whenua in their statutory documents (see Sections 2.2.4, 2.2.5 and 2.2.6 of this guide). As consent authorities, councils must carefully consider potential effects of an application on tāngata whenua. This need to consider effects implies that councils should have a working relationship with tāngata whenua and an understanding of their interests and concerns. It may also mean that councils request specific information about the potential effects of a proposed activity on tāngata whenua. Tāngata whenua may be able to provide this information as an assessment of cultural impacts or provide you with verbal or written advice on the potential impacts.

Councils have a statutory obligation to ensure information relevant to Māori under the RMA is considered. In particular, there is a statutory duty to consult tāngata whenua when preparing plans.

While there is no duty for applicants to consult with tāngata whenua in relation to resource consent applications, consultation may help ensure your proposal is acceptable to tāngata whenua, or highlight areas which could be changed to take into account tāngata whenua concerns or interests.

If you do not initiate discussions with tāngata whenua representatives, then the council may do so to better understand any potential effects related to tāngata whenua values and interests. However, if you take the lead in initiating discussions at an early stage, you are likely to submit a better quality application and avoid delays in its consideration.



Examples

Where the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga are affected by a proposal, consultation is good practice. Examples of these situations include:

- **a proposal to build a tourist lodge near a traditional battle site**
- **an application to discharge treated sewage into a river or estuary**
- **a proposal to extract sand from a beach extensively used by local Māori to collect shellfish.**

The consent authority can advise whether it thinks it would be helpful to consult with tāngata whenua, and will also be able to direct you to the appropriate representatives. Many councils employ iwi liaison officers to help applicants and tāngata whenua in resource management matters. As a starting point, Te Puni Kōkiri have developed a database of Māori organisations whose mandates to represent their iwi and hapū have been recognised by the Government and the area over which they have a kaitiaki interest. Visit: www.tekahuimangai.govt.nz/

In undertaking consultation with tāngata whenua, the principles of meaningful consultation apply (see Section 3.3.1). You must provide them with adequate information and time to formulate a response. You cannot assume the absence of a reply constitutes acceptance of your proposal. Iwi organisations deal with increasingly large numbers of resource consent applications, and need adequate warning of your proposal. It is best to ask iwi or hapū representatives how they would like to be consulted, rather than impose a schedule on them. Meetings may be required, in which case you may wish to seek assistance from experienced council staff, council iwi liaison staff or the iwi/hapū themselves. You should also be prepared to visit local marae.

3.3.3 Preparing the application

Application forms can be obtained from the consent authority. The RMA outlines a few basic requirements:

- A description of the activity for which consent is sought and its location.
- An assessment of any actual or potential effects the activity may have on the environment, and the ways in which any adverse effects may be mitigated. Commonly known as an assessment of environmental effects, this is the most important component of the application.
- Any information required to be included in the application by a plan or regulations. You can find this out from consent authority staff or from looking at the plans.

You should also include a statement specifying all other resource consents you may require from any consent authority (and whether you have applied for such consents). This information enables consent authorities (if more than one is involved) to coordinate their activities and potentially deal with the applications as a package, thereby saving you time and money.

The Fourth Schedule of the RMA outlines the issues which should be covered in an assessment of environmental effects (AEE). See also *A Guide to Preparing a Basic Assessment of Environmental Effects*, Ministry for the Environment.

3.3.4 Preparing applications for subdivision consent

The processes for preparing and considering applications for resource consent to subdivide land differ from the normal consent process. For the purposes of the RMA, *subdivision of land* includes dividing property by issuing a separate certificate of title, or by company lease, cross lease or unit title. Changes in land title generally happen before some form of development, and therefore the RMA establishes a unique set of requirements for subdivision to ensure:

» future development is adequately provided for in terms of services such as road access and water, power and gas supplies

» the impact of increased use on the services and other assets such as park land provided by councils arising from the development are addressed by the developer.

It is important to bear in mind that it is the district plan which establishes whether a subdivision will require a consent in any particular instance, and if so, what type of consent. District plans will contain provisions specific to subdivision (including minimum lot sizes) that you must take into account in preparing your application.

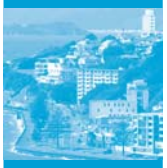
The information relating to boundaries and reserves should be contained on a plan attached to the consent application. It is important the plan is a true and accurate record of your intentions as there is little room for alteration once a resource consent has been granted. For this reason, subdivision applicants should seek assistance from a surveyor in preparing their plans. The RMA sets out what consent authorities must consider in subdivision applications, the special conditions they can impose on granting consent, and the subsequent process that consent holders must go through in exercising their consent (dealt with in later sections).

3.3.5 Preparing the assessment of environmental effects

Every application for resource consent *must* include an *assessment of environmental effects*. There are no exemptions to this requirement. The work involved in preparing an assessment of environmental effects will depend on the scale and significance of the activity's actual and potential effects on the environment.

The RMA provides some guidance on what should be included in an assessment of environmental effects and what should be considered in preparing one (see below). Further guidance is available in *A Guide to Preparing a Basic Assessment of Environmental Effects* available from www.rma.govt.nz/

If you have already thought about the nature of your activity and its effects in consulting with the consent authority or affected parties, then you are well on the way to preparing an assessment of environmental effects.



Matters that should be included in an assessment of effects on the environment:

» A description of the proposal.

» A description of any possible alternative locations or methods for undertaking the activity (where it is likely that an activity will result in any *significant* adverse effect on the environment).

» An assessment of the actual or potential effect on the environment of the proposed activity.

» Where the activity includes the use of hazardous substances and installations, an assessment of any risks to the environment which are likely to arise from such use.

» Where the activity includes the discharge of any contaminant, a description of:

- the nature of the discharge and the sensitivity of the proposed receiving environment to adverse effects
- any possible alternative methods of discharge, including discharge into any other receiving environment.

» A description of the mitigation measures (safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect.

» People or groups affected by the proposal, the consultation undertaken (if any), and any response to the views of those consulted.

» Where the scale and significance of the activity's effects are such that monitoring is required, a description of how, once a proposal is approved, effects will be monitored and by whom.

Matters that should be considered when preparing an assessment of effects on the environment:

» Any effect on those in the neighbourhood and, where relevant, the wider community including any socio-economic and cultural effects.

» Any physical effect on the locality, including any landscape and visual effects.

» Any effect on ecosystems, including effects on plants or animals and any physical disturbance of habitats in the vicinity.

» Any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, cultural, or other special value for present or future generations.

» Any discharge of contaminants into the environment, including any unreasonable emission of noise, and options for treating and disposing of contaminants.

» Any risk to the neighbourhood, the wider community, or the environment through natural hazards or the use of hazardous substances or installations.

3.3.6 Checking and submitting your application

If possible, and if the scale and nature of your proposal warrant it, meet with your consent authority again before submitting the application. Address any gaps before formally submitting the application. Once you have done so, ensure you obtain a receipt of some form.

3.4 Reaching a decision

3.4.1 Processing the application

Once an application for resource consent has been received by a consent authority, its consideration is governed by the RMA. If the council is not satisfied that all relevant information is included in the application, it can refuse to accept the application. Once the completed application is accepted by the council, it is considered as a new application. Each step in the resource consent process is outlined in Figure 4 on page 37, along with the timeframes specified by the RMA.

The RMA enables consent authorities to make a number of considerations that can dramatically affect the time it takes to process the application. These include:

» deferring consideration until other consents have been obtained

» making requests for further information

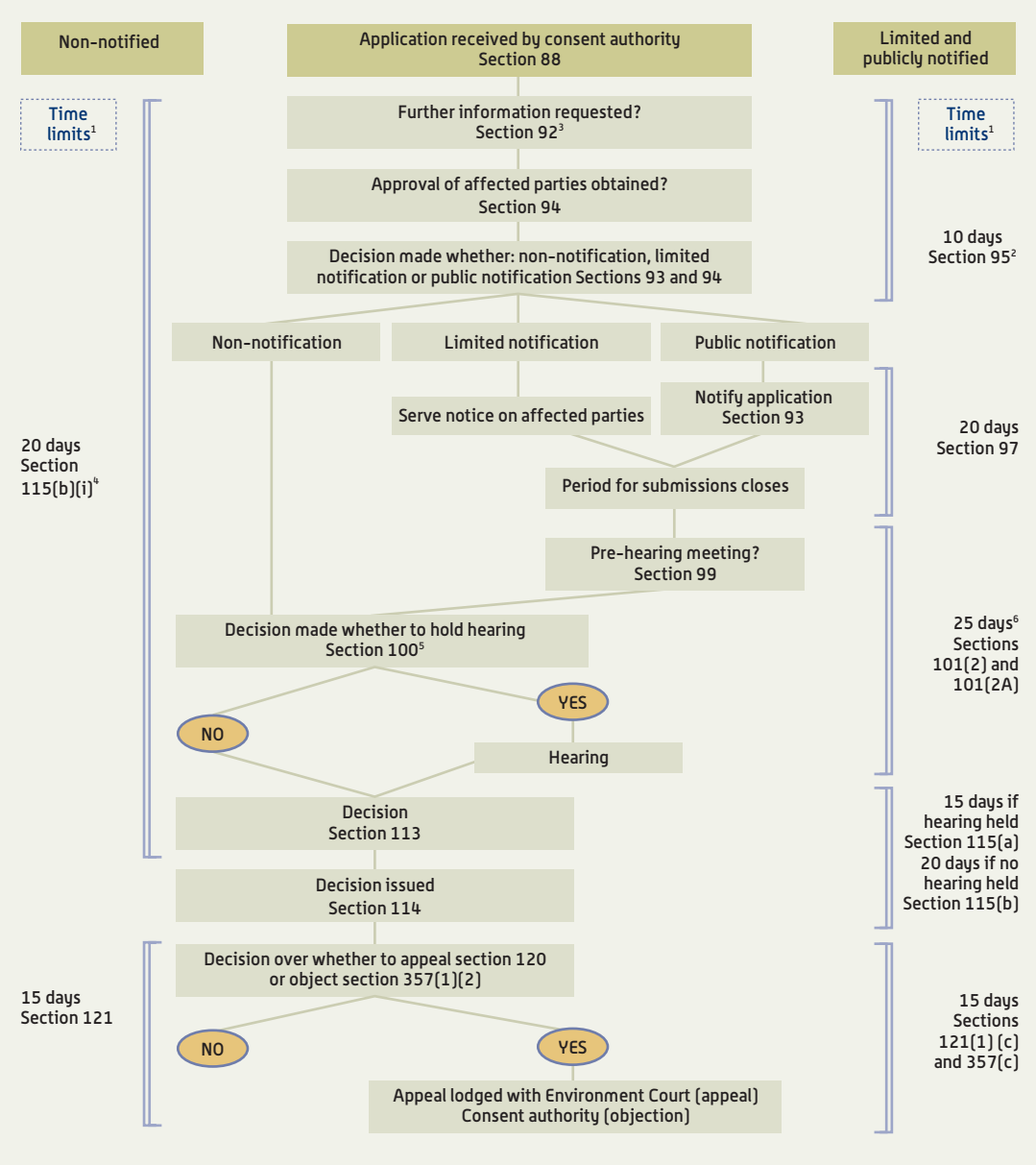
» deciding whether to notify the application, whether to seek the written approval of affected parties, and whether to hold a pre-hearing meeting and/or a hearing.

Whether these happen depends to a large extent on the nature of your proposal and the effort and resources you have put into understanding the consent authority's requirements and the interests of those likely to be affected by your proposal.

3.4.2 Deferring the processing of applications

The RMA allows the consent authority to *defer the processing* of an application for resource consent if it considers that other consents are required for the activity, and that, to enable better understanding of the proposal, these other consents should be applied for first. Although it sounds like a potential obstacle, this provision is rarely used. It can actually speed the entire process, as it allows for all the necessary requirements to be processed simultaneously by one or more consent authorities, with recourse to joint or combined hearings. It certainly emphasises the importance of identifying all your consent requirements early in the process. If need be, you can seek to have such determinations reviewed by the Environment Court.

Figure 4: Resource consent procedure and timeframes



Notes:

1. It should be noted that these timeframes are extendable under certain circumstances.
2. This period begins when the application is received. If further information is sought, the 'clock stops' until the information is provided to the council.
3. Applicants have 15 working days to either provide the information or provide a response in relation to the request.
4. This period begins when the application is received. If further information or the approval of affected parties is sought, the 'clock stops' until the information is provided to the council. If a hearing is held, additional timeframes apply (see right-hand column).
5. If the consent authority decides not to hold a hearing on a notified application, it must release its decision within 20 working days, rather than the 40 days otherwise indicated in this Figure. At this point, a consent authority may decide to hold a hearing in relation to a non-notified application, if the situation demands it.
6. Council may direct the pre-provision of evidence before a hearing. In this case, the time period for beginning the hearing is 40 working days.

3.4.3 Requesting further information

The RMA also allows the consent authority to *request any further information* from you to help it in considering an application. Such requests should be made in writing with reasonable time before any hearing. Where the consent authority considers that significant adverse environmental effects could arise from the proposal, it may require you to explain possible alternative locations or methods for your activity, reasons for making the proposed choice and the consultation you have done.

Once the request has been made, the statutory 'clock' stops (the time taken to provide the information is not included in the calculation of the statutory timeframes) until the information is provided. You must respond to the request for further information within 15 working days from the receipt of the request. You can either:

» provide the information

» tell the council in writing you agree to provide the information, or

» refuse to provide the requested further information to the council, and request it to proceed with the application on the basis of the information already provided.

If you refuse to provide the requested information, the council must then process the application and either grant or refuse the application based on the information it already has. The council is unlikely to grant an application for resource consent if it cannot determine the likely effects.

Around 35 percent of applications for resource consent generate requests for further information (Ministry for the Environment, *Survey of Local Authorities 2003/04)*. In addition, around half of all consent authorities are only prepared to officially acknowledge receipt of an application once it has been checked.

The high rate of requests for further information may reflect a poor understanding of the consent process among consent applicants, and underlines the importance of early consultation with consent authorities to find out their requirements.

3.4.4 Deciding whether to notify the application

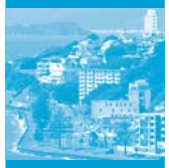
There are three different ways an application can be processed. These are:

» non-notification

» limited notification

» public notification.

Apart from deciding whether to grant an application, the most important decision a consent authority makes is which process is appropriate for the application. The process decided on will directly impact on the time it takes to process the application.



Limited notification

For applications that are being processed under the limited notification process, only those parties on whom the council has served notice of the application can lodge a submission to the application and speak to their submission at a hearing if one is held.

Public notification

The public notification process requires the consent authority to serve notice of the application on:

» owners and occupiers of the land to which the application relates

» people it considers are adversely affected by the application (including adjacent landowners and occupiers)

» local authorities, iwi authorities and other people or authorities as it considers appropriate

» the Minister of Conservation, the Historic Places Trust, and the Minister of Fisheries if, respectively, the application relates to land adjoining the coastal marine area, would affect a recognised heritage value, or relates to marine or fish farming.

The consent authority also has to advertise the application in local newspapers. While not mandatory, it may also erect a sign at the site giving notice of the application.

Notification decision

The RMA expects that all applications for resource consent will be publicly notified unless one or more exceptions apply. In practice, these exceptions apply in the majority of cases. According to the Ministry for the Environment's *Survey of Local Authorities 2003/04*, only 4.8 percent of all applications were publicly notified in the 2003/04 financial year.

Proposals that will have a greater, more widespread effect on the environment are more likely to be notified than those that will not. Consent authorities may require written approvals to be obtained from neighbours and other affected parties if the effects are likely to be relatively minor and localised. Generally, a greater proportion of the consent applications handled by regional councils are publicly notified (nine percent) than those processed by district and city councils (two percent). This reflects the potential impact on the environment of the proposals that the two tiers deal with.

It has already been suggested you discuss with the consent authority whether your application is likely to be non-notified or notified, well before you submit the application. At that stage, the consent authority should also be able to indicate those parties it considers could be adversely affected by your proposal. The council may be able to advise if you are unable to obtain all the identified affected parties approval that the application will be only served on affected parties (ie, limited notification) or whether the application will be publicly notified. This will give you the direction you need to begin the consultation exercise.

While not mandatory, the effort you put into consultation with potentially affected parties is clearly a factor in the consent authority's decision on notification. It may suggest that you seek written approvals from affected parties as an alternative to notification. As indicated earlier, the consent authority has 20 working days to process a non-notified application, but the 'clock stops' while those written approvals are being obtained, if required. If you have already carried out a comprehensive consultation exercise then this will help you obtain those approvals quickly and help the consent authority expedite the processing of your application. It also enables you to take into account the concerns of those parties early on and amend your proposal accordingly.

Once your application has been formally received, the consent authority has 10 working days to publicly notify it, unless awaiting a response to a request for further information or written approvals. Once notified, anybody with an interest in your proposal has 20 working days to make a submission. The process for making submissions is described in the next section. Once the submission period has closed, the consent authority will provide you with a list of the submissions it has received.

3.4.5 Holding pre-hearing meetings

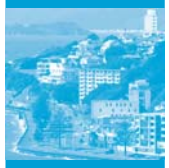
The RMA allows consent authorities to hold a *pre-hearing meeting* between applicants, submitters and other interested parties if it considers that such a meeting could help clarify, mediate or facilitate a resolution on any matter or issue. In 2005, the RMA was amended to provide a more detailed process for pre-hearing meetings to focus on achieving better outcomes from meetings.

The consent authority can suggest a pre-hearing meeting if it chooses, or if one of the parties asks for one. If the applicant requests a pre-hearing meeting, submitters can be required to attend. If any submitter, or the applicant, is required to attend a pre-hearing meeting, and doesn't attend, the council can refuse to consider their submission or application unless they have a reasonable excuse for non-attendance. Councillors, planning officers, or any other person responsible for making the decision on the application may also attend if the other parties agree.

The chairperson of a pre-hearing meeting must prepare a report and circulate it to all parties who attended the pre-hearing meeting, five working days before the hearing begins. This report will set out the issues that were agreed and those that are outstanding. It may also set out the nature of evidence to be called, or a proposed timetable for the hearing. The consent authority must have regard to the report in making its decision on the application.

Pre-hearing meetings have proved to be a popular way of resolving issues in the consent process. Before the 2005 amendment to the RMA, pre-hearing meetings were used in about half of all notified consent applications. In these instances, 23 percent resulted in all outstanding issues being resolved with the result that no hearing was required.

Holding a pre-hearing meeting does not guarantee that a hearing will not need to be held, or that the consent will be granted. All parties must be willing to meet and listen to the views of other participants. A pre-hearing meeting may lead to a shorter hearing, and/or one where the potential for conflict between the participants is avoided. As with most elements of good practice, it involves a little bit more work upfront by the council, applicants and submitters to avoid delays and frustrations later.



Mediation

The RMA also allows the consent authority to refer parties to mediation, with the agreement of all parties. The person who conducts the mediation must report the outcome of the mediation to the consent authority.

Mediation can help parties identify common ground and define, narrow, and resolve issues. Like pre-hearing meetings, mediation can reduce hearing time, negate the need for a hearing and lessen the chance of subsequent appeals.

3.4.6 Holding hearings

The RMA does not require that *hearings* be held in every instance. It is uncommon for hearings to be held for non-notified applications. In addition, many notified applications do not result in a hearing, often due to the pre-hearing meetings process. A hearing is only held when the consent authority considers it necessary or an applicant or submitter requests to be heard.

A hearing must start no later than 25 working days from the closing date for submissions (or where an application is not notified, 25 working days from the receipt of the application). The consent authority must give at least 10 working days notice of the start date for the hearing to the applicant and every person who made a submission and stated they wished to be heard.

The consent authority also has the discretion to direct an applicant to provide briefs of evidence to it before the hearing. If the consent authority directs pre-provision of evidence, the applicant must present briefs of evidence to the consent authority 10 working days before the hearing. The council officer's report should be circulated to parties 15 working days before the hearing and a submitter using expert evidence must present briefs of evidence to the consent authority five working days before the hearing. To facilitate the pre-provision of evidence in these cases where it is required, the time period for beginning the hearing is 40 working days after the close of submissions.

Pre-provision of evidence will not be appropriate in every case. It will be most useful where the application is complex or where there are conflicting opinions between experts.

Under the RMA, in general, all relevant resource consents should be applied for at the same time, even where these are required by different consent authorities (eg, the regional and district council may require separate consents be sought for the same activity). This enables councils to consider the potential effects of the entire activity, rather than looking at specific aspects in isolation. In these cases, the RMA encourages *joint hearings* for resource consent applications relating to the same proposal lodged with more than one authority, or *combined hearings* for more than one application relating to the same proposal lodged with the same authority. Where more than one consent authority is involved, the regional council generally acts as the coordinating agency. Joint and combined hearings enable all elements of a relatively complex proposal to be dealt with simultaneously, thereby significantly speeding up the process. Where the applications are insufficiently related and the applicant agrees, such hearings need not be held.

The RMA also sets out the way in which hearings should be held:

- hearings must be public and avoid unnecessary formality
- consent authorities must recognise tikanga Māori (including accepting evidence in te reo Māori)
- no person other than the chairperson or other member of the hearing committee may question any party or witness
- cross-examination is not permitted
- anyone, including the applicant and submitters, has the right to be heard, although the consent authority can limit this if there is likely to be excessive repetition
- information can be protected (by excluding the public from the hearing) if it is considered that its disclosure could give serious offence to tikanga Māori, expose the location of wāhi tapu, or lead to the release of commercially sensitive information
- if reports are prepared by staff from the consent authority (as they invariably are) they must be distributed to the applicant and all submitters attending the hearing at least five working days before it starts
- a consent authority may request and receive information or advice at a hearing.

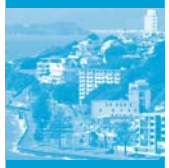
Representatives of the consent authority (usually councillors) chair and sit on the hearing committee, and are charged with keeping order. Applicants and submitters may retain people to represent them (often a lawyer or planner). Both applicants and submitters may call witnesses to present evidence relating to the case. Evidence may be presented in writing or given orally.

Although the consent authority has a quasi-judicial role, it is important to remember that the hearings process is a forum for people to present their views about the environmental impacts of a particular proposal. All parties have equal rights to a fair hearing, and antagonistic behaviour should be avoided. People giving evidence should focus on the environmental effects of the proposal.

> **It is important to maintain a good working relationship with the consent authority throughout the consent process. This may include asking if you can view the drafts of reports produced by consent authority staff, to ensure they accurately describe your proposal, its effects, and suggest practical, achievable ways of mitigating those effects. Many council staff will appreciate your input: after all, it is not in their interests to recommend granting consents that holders cannot exercise.**

3.4.7 The decision

Decisions on applications are made by a hearing committee (where a hearing has been held). The RMA provides for decisions on most non-notified consent applications to be delegated to subcommittees of the consent authority, consisting of consent authority staff and/or councillors. This helps increase the efficiency of the decision-making process.



The RMA also allows consent authorities to delegate decisions (and the hearing of submissions) on resource consent applications (or on *notices of requirement*) to independent commissioners. Consent authorities often use this approach where they have an interest in the proposal themselves, or the application is complex or controversial enough to warrant involving a more independent or technically qualified decision-maker.

If the application has been notified, decisions must be released by the consent authority no later than 15 working days after the end of hearings (or within 20 days of the closing of submissions if no hearing eventuated). Decisions on applications that are not notified must be released no later than 20 days after the application was first lodged (noting the clock stops if further information is requested until the request has been satisfied by the applicant or written approvals obtained).

Decisions must be in writing and:

» specify reasons for the decision

» list the main findings of fact

» note the principal issues in contention

» provide a summary of the evidence heard

» identify the relevant plans and policy documents considered.

Decisions must be made available at the council's offices and public libraries. Notice of the decision must be served on the applicant and all submitters.

The RMA sets out the matters that consent authorities must consider in deciding whether or not to grant consent, and if so, what conditions to impose. From your perspective, it is important to note that the RMA requires consent authorities to take into account:

» Part II of the RMA; that is the purpose and principles of the RMA (described in Section 1.5 of this guide)

» Section 104 of the RMA, including:

  – any actual and potential effects on the environment of allowing the activity

  – any relevant policy statement or plan

  – any other relevant matters

» where relevant, section 105 of the RMA, the nature of any discharges and the sensitivity of the proposed receiving environment, reasons for the applicant's choice, and any possible alternatives.

Conversely, the RMA does not allow consent authorities to have regard to:

» any effect on any person who has given written approval to the proposal

» trade competition.

The RMA allows consent authorities to impose *conditions* on the granting of consent, or turn down an application for anything other than a controlled activity or a restricted coastal activity. A consent authority can only grant an application for a non-complying activity where the proposal would not be contrary to a plan (where one exists) or where the activity would have minor adverse effects on the environment and the proposal meets Part II of the RMA and section 104. The consent authority may refuse to grant a subdivision consent, or may grant such a consent subject to conditions where the land is likely to be subject to material damage by natural hazards, or where the use may accelerate such a hazard, or where sufficient provision has not been made for access to each lot created. Discharge permits for activities that would cause a significant adverse environmental effect can only be granted where justified by exceptional circumstances, or where the work is temporary or essential.

The conditions which may be attached to granting a resource consent can include:

» paying a financial contribution (may include money and/or land)

» bonds or covenants requiring other conditions to be met

» providing services or works of a remedial nature (such as tree planting)

» a requirement to carry out monitoring and sampling work once the activity has begun, and to supply this information to the consent authority regularly.

Councils often impose other conditions relating directly to the effects of the activity. The ability to require bonds, covenants and financial contributions is most commonly used for subdivision consents, and can apply after the resource consent has expired.

Example

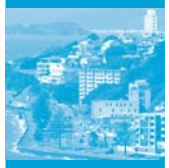
A district council grants consent for a proposal to establish a shopping mall near a major river. Conditions attached to the resource consent include requiring the preparation of a landscaping and planting plan including plants native to the local area, the painting of the mall's external walls in subdued colours, and vesting a 20m-wide strip of land next to the river as esplanade reserve.

Often, discharge permits are granted subject to the consent holder adopting the *best practicable option* to minimise any potential or likely adverse effects on the environment. This allows the consent holder to find the most cost-effective means to address those effects, and also adopt any new technologies that may develop during the life of the consent.

If, by chance, a proposal does not proceed, the RMA details how to refund money given as bonds or return land.

3.4.8 Decisions on applications for subdivision consent

The RMA outlines conditions that can be attached to granting subdivision consents. These include provisions for esplanade strips and reserves, earthworks, building sites and the amalgamation of allotments. Esplanade reserves and strips enable public access to rivers, lakes and the coast to be maintained and enhanced, and assure the protection of conservation values in those areas. Esplanade reserves become district/city council property to be administered as public reserves. Esplanade strips are a flexible way of pursuing the same objectives; they move in tandem with changes to river banks



and the coastline, and remain owned by the landholder, while providing for an appropriate level of public access.

The standard breadth of esplanade strips and reserves is defined as 20 metres alongside lakes and rivers of a certain size. Compensation is payable to landowners where a greater width is proposed to be taken, or any lot created by subdivision is greater than four hectares.

These conditions may be imposed in addition to those provided for elsewhere in the RMA. More often than not, consent authorities impose financial contributions, bonds and covenants on granting consent for large subdivisions of land which, if developed for a subsequent use, will need to be serviced by roads, water supplies and other utilities. Examples of such conditions are provided later in this section.

3.4.9 Consents for restricted coastal activities

Restricted coastal activities are described in regional coastal plans as having significant or irreversible effects on the coastal marine area. They undergo a different assessment process from other resource consents. They are decided by the Minister of Conservation on the recommendation of a regional council. The recommendation is itself subject to appeal, but the Minister's decision is final. The regional council or the local conservancy of the Department of Conservation will be able to advise you about this process.

3.4.10 The costs of the consent process

With the principle of user pays in mind, the RMA allows consent authorities to recover the costs of processing applications for resource consents or certificates of compliance, providing information requested by an applicant or any other party, using resources in monitoring and administering consents that have been granted, and processing private plan changes.

On this basis, all consent authorities have implemented a fee schedule for processing different types of applications. These fees or fixed charges are generally required as a deposit on submission of an application. Councils then use supplementary provisions in the RMA to charge additional fees to recover the *actual and reasonable costs* of processing individual applications. This may include council officers' time, hearings costs and specialist input. The RMA requires the consent authority to consider the relative benefits to the consent holder and the community at large in setting these fees. The council must provide an estimate of the likely charge upon request.

> **Example**
>
> **The Queenstown Lakes District Council charges a deposit of $500 for certificates of compliance and basic resource consent applications. A notified consent requires a deposit of $1500, and the applicant is charged on a full cost recovery basis over and above the deposit. Additional costs include staff time, hearing costs, pre-hearing meeting costs and administration costs.**

These are the direct costs associated with an application for resource consent. In addition, you will need to take into account the costs you may incur in preparing an assessment of environmental effects, obtaining legal and other specialist advice, and the loss of productive time. Once a consent has been granted, you may be required to pay an annual monitoring charge to the consent authority so it can check you are complying with the terms of your consent.

3.4.11 The time involved in obtaining consents

Figure 4 on page 37 provides an indication of the time involved in the resource consent process. Working days are defined as any day other than a weekend, a public holiday, or any time between 20 December and 10 January.

The RMA allows consent authorities 70 working days to process notified (both limited and public) applications for resource consent but only 20 working days to process non-notified applications for resource consent. The extra time required to process a notified application provides for the application to be publicly notified (or in the case of limited notification, served on affected parties), submissions to be made, and arrangements for hearings to be made. In addition, the consent authority is allowed more time to make a decision so all the viewpoints presented can be taken into account.

Under certain circumstances, these timeframes can be extended provided the council has taken into account the interests of the applicant, the community, and avoids unreasonable delay. The timeframe may be extended by no more than double the period specified in the RMA. This can be done at the request of the applicant or by the consent authority itself, but all parties must be notified. Alternatively, a consent authority may extend timeframes for as long as it thinks fit, at the request of, or with the agreement of, the applicant.

The Ministry for the Environment's *Survey of Local Authorities 2003/04* indicates that 77 percent of all resource consent applications within the 2003/04 financial year were processed within the timeframes specified in the RMA. The survey also showed that consent authorities formally extended the timeframes on 12.6 percent of the total resource consents processed.

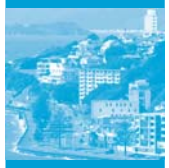
You can do a lot to ensure the process goes smoothly. You can take a proactive approach to identifying information requirements, undertaking consultation at an early stage, and providing information promptly.

3.5 After the decision

3.5.1 Start and duration of the consent

Resource consents start once the period for appeals to the Environment Court has ended if no appeals have been lodged, or when any appeals that were lodged have been resolved. You must carry out the proposed works and be undertaking the activity within five years of the consent being granted unless otherwise stated in the consent, otherwise your consent will lapse. You are able to apply to the consent authority for an extension before the expiry of five years. When considering the application to extend the lapsing period, consent authorities must take into account matters such as whether you have made substantial progress or effort towards using the consent, whether you have obtained the written approval of those affected by the extension and the effect of the extension on the policies and objectives of any plan. Similar provisions apply when consents previously exercised may be cancelled if not exercised for five years.

Once granted, resource consents for land-uses, subdivisions and reclamation remain valid indefinitely, unless otherwise specified in their terms. All other consents have a maximum lifespan of 35 years, if specified in the terms of the consent, otherwise the consent is only valid for five years. In placing limits



on the life of some consents, the RMA strikes a balance between providing the certainty you require and the need to re-evaluate some approvals if unforeseen adverse effects arise.

3.5.2 New consents to replace existing consents

Existing consent holders have priority over new applications for the same resource (eg, water allocation) when they apply for a new consent to replace an existing one. When existing consent holders are given priority, the consent authority must consider the following factors:

» the efficiency of the person's use of the resource

» the use of good industry practice by that person

» whether the existing consent holder has been served with an enforcement order or convicted of an offence under the RMA.

The priority process is a default position that can be changed by the regional plan (and does not take effect until August 2008).

Consent authorities must also have regard to the value of existing investment when determining applications for new consents to replace existing consents. This requirement only applies to applications made where the existing consent holder applies for a new consent for the same activity and the application is made at least three months before the expiry of the existing consent.

3.5.3 Exercising a subdivision consent

The RMA sets out the steps that must be followed once you have obtained a subdivision consent. Consent authorities can issue *consent notices* that allow conditions to be placed on granting subdivision consents that are recorded against the certificate of title. The RMA also allows consent authorities to issue *completion certificates*, where compliance with a condition relies on work being completed, such as forming an access road or providing street lighting. If the applicant fails to complete work for which a bond has been provided, the consent authority may carry out the work itself and recover the cost of doing so from bond moneys.

If specified by a district plan, the act of subdivision can be made a permitted activity. In such instances, the landowner must obtain a *certificate of compliance* to proceed with creating the new title. Once the certificate of compliance has been obtained, or the subdivision consent that the plan specifies has been granted, the subdividing owner has five years (unless otherwise stated in the consent) to submit a *survey plan* to the district or city council for approval. The survey plan must contain details of the esplanade reserves and strips and access strips that may have been required as conditions on the subdivision consent.

The consent authority will then determine whether the survey plan complies with the relevant subdivision consent or certificate of compliance. Assuming that approval has been obtained, and the survey plan has been sealed and certified by the consent authority, the owner has three years to deposit the survey plan with Land Information New Zealand for checking under the *Land Transfer Act 1952*. Only when Land Information New Zealand accepts the plan can the new title be created.

3.5.4 Ownership and transfer of consents

While resource consents are neither real nor personal property, they can be dealt with on the death or bankruptcy of the consent holder by a personal representative or an official assignee of the consent holder. Most resource consents are attached to the land or site to which they relate, and can therefore be transferred to new owners when the land is sold. People given express or implied permission by a consent holder to act on a consent are also bound by any conditions attached to that consent. This applies to employees and contractors working for organisations that hold resource consents.

Water permits can be transferred in whole or in part and for limited periods. The transfer of discharge permits is permitted where this is expressly allowed by a rule or plan or by consent of the authority. Discharge permits cannot be transferred if the transfer would worsen the actual or potential effects of the discharge on the environment or would contravene a national environmental standard. If discharge is to water, then the permit can only be transferred if both sides of the water body are within the same catchment. If the discharge is to air, then the permit can only be transferred if both sites are within the same airshed. Applications for the transfer of a discharge permit must be lodged jointly by the permit holder and the person to whom it will be transferred.

3.5.5 Changing or cancelling consent conditions

It may be that, in your opinion, the conditions imposed on your consent are impractical, unachievable or unjustified. The RMA allows you to apply to the consent authority for the *change or cancellation of any condition* attached to your resource consent, other than the term for which it has been granted. The only exceptions are subdivision consents for which a survey plan has already been deposited.

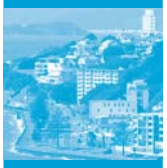
As a consent holder, you can apply at any time in the life of the consent for a change or cancellation of conditions, apart from a change or cancellation to the conditions on the duration of the consent. The application will be treated as though it is an application for a resource consent for a discretionary activity, including determining whether any parties are affected. The council will only consider those effects relevant to the change in condition(s), not the entire proposal from scratch. Those who made a submission on the original application are considered affected, in addition to any person who may be affected by the change or cancellation.

To avoid the need to take this course of action, you are recommended to take any opportunity to give feedback on the draft recommendations contained in officers' reports before the consent authority makes a decision. Should you wish to review draft conditions, you usually need to ask the consent authority to be given the opportunity to do so.

3.5.6 Reviewing consent conditions

The RMA also allows the consent authority to *review the conditions* attached to any resource consent that it has granted, with the exception of subdivision consents. However, the RMA limits the circumstances in which such reviews may be done, to protect consent holders. These situations are:

» *At times that are indicated in the consent itself.* If there is some uncertainty about the potential effects of an activity, a review clause enables any adverse effects that do arise to be addressed.



» *To ensure the consent holder continues to actively seek the best practical option to deal with adverse effects, for discharge and coastal permits.* This enables new, more efficient and more cost-effective technologies to be used as they are developed.

» *To require a consent holder to operate within new national environmental standards as they are developed in the case of a water, coastal or discharge permit.*

» *To require a consent holder to operate within new rules relating to water quality and quantity as they are developed to address particular problems that may not have been identified at the time the consent was granted.* Provisions in the RMA ensure that compliance with new rules can be gradual, to allow consent holders to adjust their activities.

The RMA sets out the procedure for consent authorities to review the conditions attached to a consent. This includes a requirement to inform the applicant and the original submitters, allow for further submissions and hold a hearing if necessary.

3.5.7 Lodging an objection

If you are unhappy with a consent authority's decision in the following matters, the RMA allows you to *object* to the consent authority about:

» some decisions to refuse or grant a resource consent, and place conditions on a consent

» decisions over issuing certificates of compliance

» decisions to charge additional processing fees for resource consent applications

» requirements for further information

» refusing to accept the application for lodgement.

You can object (rather than appeal) to a decision by consent authority staff (made under delegated authority) to refuse consent for an application only if it was non-notified, or no submissions were received after notification. A similar right of objection is available for decisions over applications to change or cancel any condition, or where a consent authority reviews those conditions. Objections are an important avenue for applicants and consent authorities to negotiate the practicality of conditions placed on resource consents.

All such objections must be made in writing to the consent authority within 15 working days of the decision being issued, setting out the reasons for the objection. Consent authorities must consider the objection within 20 working days, or, in the case of an objection relating to processing fees, as soon as practicable. Objections will normally involve a hearing to enable the objector to present their case, and the consent authority must provide written reasons of its subsequent dismissal or upholding of the objection.

The only opportunity to challenge a decision to decline the consent by the council itself, or to impose certain conditions on a consent where the application was notified (and submissions were received), is to lodge an appeal in the Environment Court.

3.5.8 Lodging an appeal

If, as an applicant, you are unhappy with any of the following decisions made by a consent authority you may *lodge an appeal* with the Environment Court:

» declining your application for resource consent

» imposing conditions on granting, changing or reviewing a resource consent

» dismissing your objection on the basis of any of the matters outlined above.

Submitters may also appeal a consent authority's decision on a resource consent application. Generally, submitters to a proposed plan or policy statement have the same right to appeal as submitters on a notified application for a resource consent. Appeals on plans and consents generally follow the same process.

You must lodge the notice of appeal with the Registrar of the Environment Court (there are registries in Auckland, Wellington and Christchurch) and serve notice on the consent authority whose decision you have appealed within 15 working days of receiving notice of that decision yourself. The notice must state the reasons for the appeal, and what you want done about it. Within five working days of lodging the appeal with the Environment Court, you must also serve notice on any person or organisation that originally made a submission on the matter and the applicant.

The RMA also allows submitters to appear at proceedings, as well as any person or organisation with an interest greater than the public generally. In practice, the latter might include such organisations as the Department of Conservation, an iwi authority, tāngata whenua group, or a public health agency. Such parties must give notice to the Court within 30 working days after the appeal is lodged.

In determining an appeal, the Environment Court has the same powers as the organisation whose decision is the subject of the appeal. The Environment Court must have regard to the decision that is being appealed. It has the powers to accept evidence that was submitted at the consent authority hearing and to direct how evidence is to be given to the Court. This enables the Court to take evidence as read and helps the Court focus on the issues of contention and shorten the hearing times, rather than having to fully rehear every application.

The Court's decisions are final unless it chooses to review its decision due to new information coming to hand, or its decision is appealed to the High Court on a question of law. However, any appeal to the High Court, does not by right, act to stay (or delay) the effect of the Environment Court's decision.

The Environment Court has the powers of a District Court in the exercise of its civil jurisdiction. It can hold participants in contempt of Court, for things such as inappropriate behaviour in the Court or for disobeying a direction made by the Court, and can order one party to pay the costs of another. The implications of this are that you must consider all your options before lodging an appeal. If you decide to appeal you and all other parties must cooperate with the Court.

The Court does not, as a rule, *award costs* to a successful party, but it may do at its discretion. This does not mean that costs will be awarded against an appellant to compensate a developer for the delays associated with establishing their proposal, or to penalise those parties who refused to enter into mediation.

Where someone has acted inappropriately, for example acting in bad faith or with a 'vexatious' intention, they may have costs awarded against them. Vexatious behaviour could include someone who proceeds with their case despite repeated warnings from the Judge that their evidence is irrelevant. A hearing in the Environment Court is not a forum for arguing general issues. Appeals should relate to the plan or policy statement being considered, the consent authority's decision, the applicant's proposal and/or the effects of the activity on the environment. Costs may be awarded against people who fail to proceed with a hearing or give insufficient notice of abandoning their case. For these reasons, you should seek legal advice before proceeding to lodge an appeal.

Remember, the appeal process is an important way for people with genuine concerns about a decision to seek redress. The RMA has a number of mechanisms to encourage the fair and efficient hearing of parties, including an opportunity to conduct the proceedings without undue formality, recognise tikanga Māori, hear proceedings together, hear proceedings locally, hear appeals as soon as practical, and hear appeals in public. The Environment Court actively encourages parties to take part in conferences and forms of alternative dispute resolution (such as mediation) as an alternative to continued litigation.

If your concerns are not met by an Environment Court decision you may be able to appeal to the High Court. However, you may only appeal to the High Court on a question of law raised by a decision of the Environment Court. Before considering this you need to obtain legal advice.

You are able to seek a judicial review of a decision-making process by a local authority only if the option of an appeal under the RMA is not available. This is carried out through the High Court. Before considering this it is recommended you obtain legal advice.

3.5.9 Ongoing monitoring

Your environmental obligations do not end when you gain a resource consent. Remember, most consents are granted subject to certain conditions. These may require one-off actions such as landscaping a site's frontage or sealing a driveway. They may require an ongoing standard of performance. The consent may only be valid if you continue to comply with conditions relating to, for instance, noise emissions, the level of contaminants in discharges to air, and the maintenance of trees that screen your activity from neighbours.

To ensure you follow the terms of your consent, the consent authority may develop a programme to monitor the effects of your activity. The details of such programmes are normally included with the consent. The consent authority may carry out the monitoring itself, or require that you do so and supply it with the results. Either way, you are likely to incur the costs of such a programme. If the consent authority does the monitoring it is likely to charge an annual monitoring fee.

Programmes that establish a regular monitoring and reporting commitment are usually only developed if your activity has significant effects. Examples might include a discharge from a wastewater treatment plant into coastal waters, or smokestack emissions from a pulp and paper plant. In most other instances, your activities are only likely to be monitored occasionally, or in response to complaints from, for instance, neighbours. A common example would be the noise limits imposed on a small business in a quiet residential area.

By being aware of your ongoing obligations and ensuring you operate in a neighbourly and environmentally responsible way, you can minimise the likelihood of enforcement actions being taken against you (see Section 5 of this guide).

3.6 Other procedures

A number of other procedures differ from the standard resource consent process, and will be relevant in a relatively few, well-defined circumstances as outlined below.

3.6.1 Calling-in consent applications

The RMA provides for the Minister for the Environment to *call-in applications for resource consent* where these relate to a proposal of national significance. As with notified applications for resource consent, anyone may make a submission to the Minister, a hearing must be held, and appeals on the basis of the Minister's decision can be made to the Environment Court. Anyone can request the Minister to intervene in a matter of national significance. The Minister must consider the following when deciding what (if any) form of intervention is appropriate:

» the extent to which the matter is a proposal of national significance

» whether the local authority that would normally determine the matter has the capacity to do so

» the views of the local authority.

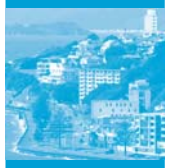
When exercising ministerial call-in powers, the Minister can either refer the case directly to the Environment Court or to a board of inquiry or intervene with a range of other options. When the matter relates solely to the coastal marine area, the Minister of Conservation has the power to call-in matters.

These provisions, to date, have been used only twice (in regard to the Taranaki Combined Cycle Power Station and for water allocation consents pertaining to the Waitaki River).

3.6.2 Coastal tendering

Land seaward of the mean high water springs mark and extending to the outer limit of the territorial sea is referred to as the coastal marine area (CMA) under the RMA (refer to Figure 2, page 19). Much of New Zealand's coastline is in an unaltered and natural state. However, there are a scattering of wharves, ports, marinas, marine farms, jetties and other permanent structures and reclamations located on the coast. The occupation of the coast by such structures tends to be *exclusive* – that is, other activities cannot use the area at the same time. Some parts of the coast are used as a source of sand, shingle and other construction materials.

The RMA sets up a *coastal tendering* mechanism to ensure that the Crown is adequately compensated for activities that involve extraction or exclusive occupation in the coastal marine area. The tendering process is in addition to, and a precursor to, the RMA's resource consent requirements.



Once a regional coastal plan is in place, the Governor-General, on the advice of the Minister of Conservation, can issue an Order-in-Council for a specific part of the coastline. This requires a regional council not to grant coastal permits until applicants obtain an exclusive right (known as an *authorisation*) to carry out particular activities. Where somebody wishes to occupy land in the coastal marine area for longer than six months, establish a sand or shingle mining operation, or reclaim or drain the foreshore or seabed, they must obtain an authorisation by public tender. Until such orders are made, applicants for coastal permits will not be required to hold any authorisations.

Once an Order-in-Council is in place, the Minister of Conservation can offer authorisations by public tender, or following public tender, by private treaty. These provisions have only been used once since the RMA was enacted.

Obtaining an authorisation does not in any way guarantee that a coastal permit will be granted by the regional council. You must obtain a coastal permit within two years, otherwise the authorisation will lapse.

4 Getting Involved in Resource Management Decision-making

4.1 Your involvement is essential

The successful implementation of the RMA relies on input from all sectors of the community. Although the RMA provides some basic guidance, *sustainable management* in a local context is entirely dependent on the collective views of residents, businesses, employees, and anybody else with an interest in the way resources are used. The RMA provides a number of avenues to encourage your participation in the plan development and resource consent process.

4.1.1 Making submissions on policy statements and plans

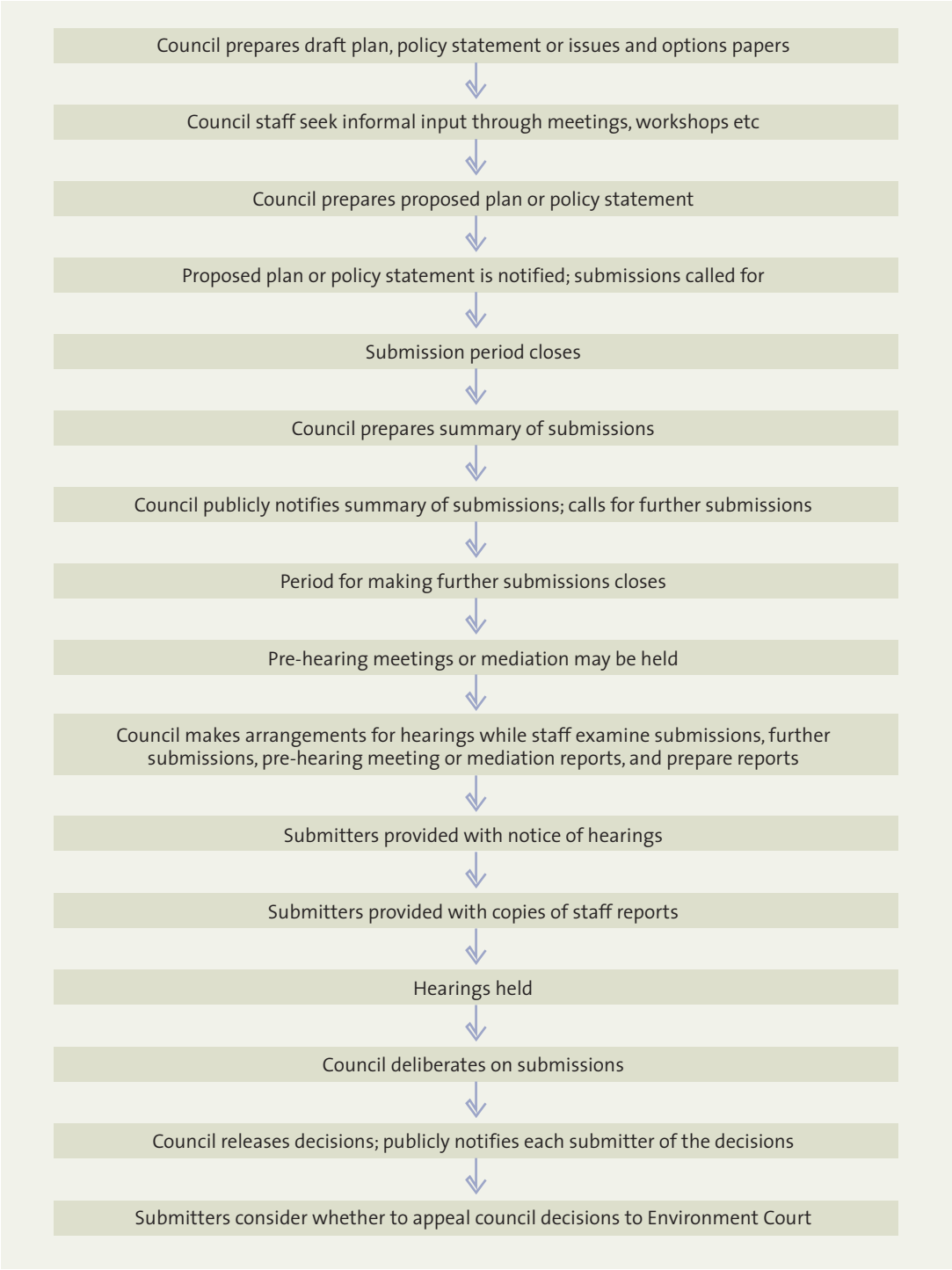
Policy statements and plans are the public face of the RMA. They are prepared by councils as a way of identifying and addressing significant resource management issues for a local area. The initial stage in preparing policy statements and plans involves considerable input from council staff and specialists. However, councils do not have a mandate to impose the results of technical analysis on the community at large. In essence, the earliest drafts of a plan only represent the ideas and suggestions of the council concerned. When a council notifies a proposed plan or changes to an operative plan, it can decide that specific rules will not have any effect until the statutory process is complete. Any such council resolution to delay rules having effect must be included in public notification of the plan.

By definition, the *environment* includes people and communities, so it is essential the public contribute to the documents that councils prepare. The direction that policy statements provide and that plans follow also has a profound (if often unrecognised) effect on the way in which we conduct our daily lives and our business, and the way in which we value the environment as a whole. These documents need public input, and the RMA establishes a very rigorous process to enable that.

The RMA sets out the procedure for preparing, changing and reviewing policy statements and plans. This process is summarised in Figure 5 on the following page. During the preparation of a policy statement or plan the council must consult with the Minister for the Environment and other affected Ministers, other councils and tāngata whenua. This is when local authorities must carefully consider how issues of concern identified by tāngata whenua will be provided for in policy statements and plans. This implies that local authorities will consult, and build a good working relationship with tāngata whenua to get a good understanding of their concerns. Generally, the council will consult with the wider community as well. To do this, councils often use issues and options papers, draft policy statements and plans, roadshows, workshops, free phone lines, public meetings and the like. Comments are usually called for and dealt with relatively informally.

Before a proposed district plan is notified, district and city councils must invite requiring authorities and heritage protection authorities to give notice of their requirements for designations and heritage protection orders. The policy statement or plan is then publicly notified. This must include public notices in newspapers, but usually also includes flyers distributed to households and displays at the council's offices. Landowners and occupiers directly affected by the district plans must be individually served with the notice by the district or city council. At this stage the document is *proposed*.

Figure 5: Typical process for preparing policy statements and plans



Any person may then make a *submission* on a proposed policy statement or plan. You do not need to be a local resident, landowner or ratepayer to do so. The council will not charge you for considering your submission. The only costs you may incur will be your own time and any fees charged by those you may ask to help you.

Grounds for making submissions

You may have a number of interests to pursue through the submission process:

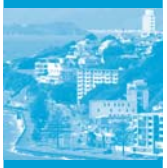
- you may be an owner of Māori land or wish to strengthen the council's strategies that support the protection of your wāhi tapu
- you may own, lease or occupy property and wish to check how the document (particularly district plans) might affect what you are able to do
- if you own a business, the provisions of both district and regional plans are likely to affect your operations
- if you are interested in the appearance of your neighbourhood or the health of the wider environment, the provisions of any policy statement or plan will be relevant to you
- you may wish to comment on the balance between regulatory and non-regulatory approaches and what you consider to be the best methods for addressing environmental issues. These documents can set out not only the rules that people are expected to comply with but also what the council is prepared to do with non-regulatory initiatives
- you may take issue with the environmental issues outlined in the plan.

Your submissions can be in support of, in objection to, or neutral to the provisions contained in plans.

It is important, however, to note that the RMA, with its focus on the *environmental effects* of activities, is not an appropriate forum for debate on other, unrelated issues. As an example, the RMA expressly excludes a council from considering trade competition in preparing policy statements and plans. This means that you cannot use the submission process to try and protect your commercial interests from new or existing competitors in the marketplace. However, this does not mean that your commercial interests are irrelevant. You might wish to make a submission opposing a proposed control on discharges if it potentially affects the financial viability of your business and you can identify some other way to address the issue. It is also inappropriate to use the submission process to pursue other ends unrelated to the environment. An example would be seeking to restrict development on the basis that establishing competing businesses may decrease the market share for existing businesses.

The public notice provides a deadline for sending in submissions. Submission forms are available from the council. In your submission you must state:

- which specific provisions of the document you are commenting on
- whether you support or object to those provisions, or have a neutral stance
- the reasons for your submission
- the decision you seek from the council
- whether you wish to be heard at any hearing.



Your submission should be concise but also cover all the points you wish to make. Staff at the council will be able to advise you on the submission process.

The council is required to prepare a *summary of submissions* and publicly notify that as well. You can then lodge *further submissions* in response to the comments made by others in their original submissions. You must provide both the council and the person who made the original submission with copies of your further submission.

The council then sets down a time for anyone who has requested to be heard. You will usually be able to say whether that time suits you, but bear in mind that the council will be trying to schedule a large number of appearances. Usually, council staff will prepare recommended responses to the submissions to help the hearing committee consider them. You will normally have an opportunity to see these recommendations before you are heard.

Pre-hearing meetings are able to be held for plans. Parties may also be referred for independent mediation with their agreement. There is no power to require attendance at pre-hearing meetings for plans (as there is with resource consents – see Section 3.4.5). A report of the meeting or mediation must be prepared before the hearing and the local authority must have regard to this report in making decisions on the plan or policy statement.

Your submission will be taken into account if you choose not to appear. Once the hearings process has been completed, the council considers all the information before it, and releases its decisions. You will be personally notified of the decision that relates to your submission. The release of decisions is usually accompanied by the preparation of a revised version of the policy statement or plan, showing how the decisions will alter the text, which you can view or ask to be sent to you.

You then have 30 working days to appeal to the Environment Court if you are unhappy with the council's decisions on your submission. The process for hearing submissions and making appeals is identical to that used in the resource consent process (see Sections 3.4.6 and 3.5.8). The same principles of good practice described in that section also apply.

Once all decisions on submissions and requirements have been made, and appeals to the Environment Court have been resolved, the policy statement or plan can be made *operative*. Before a policy statement or plan is operative, both the transitional and proposed statement or plan applies. The RMA provides that rules of proposed plans can be made operative once they are not subject to any appeals. If you are in doubt about which plan provisions apply, ask the council for advice.

Local authorities must conduct hearings, make and notify decisions on submissions, and complete their section 32 duties in relation to making decisions on plans or plan changes within two years of the proposed plan being notified. Once the entire plan is made operative, it then has a life of 10 years before a review is required and the whole process begins again, although anybody (and not just the council) can apply for a change to the plan during that time. The process for making submissions to plan changes is identical to that described above.

Between the date of notification and when the plan is made operative, the council can also initiate *variations* to the proposed plan. Variations usually happen because issues arise during the process that were not foreseen when the plan was originally prepared. The procedure for doing so is the same as that for preparing and notifying the plan itself. Most councils hear submissions on the plan and the variations to it at the same time.

Regional coastal plans follow a slightly different procedure. The preparation, notification and submission process is the same, but the document is approved by the regional council, before being referred to the Minister of Conservation for approval. The Minister of Conservation may, however, direct that changes be made to a regional coastal plan, and the plan does not become operative until it is adopted by the Minister.

The RMA offers similar opportunities to contribute to preparing national policy statements and national environmental standards, water conservation orders and heritage protection orders.

4.1.2 Notices of requirements – designations

Like all development proposals, providing works – such as schools, roads, gas lines and power supplies – that serve our growing population requires a high level of planning, design and forethought. For example, major roading proposals may take upwards of five years from preliminary need assessments to the start of construction. These long term developments require a different process for assessing their environmental effects from the resource consent process. They are dealt with through the *designation* process.

A designation gives notice of an intention to use land in the future for a particular development, through a provision in a district plan that provides for the work. It does this without the agency responsible for the work having to obtain a resource consent. A designation provides for an activity in terms of the district plan only. Should the proposed activities require resource consent from the regional council, these still need to be sought through the same process as any other applicant.

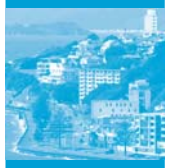
Land can only be designated by *requiring authorities*. Under the RMA, requiring authorities automatically include all Ministers of the Crown, regional councils and territorial authorities. *Network utility operators*, such as telecommunication, electricity and water supply companies, may also designate land if the Minister for the Environment approves them as a *requiring authority*. Requiring authority status cannot be approved unless the Minister is satisfied that the applicant will, among other things, give proper regard to the interest of those affected and of the environment in general. Approximately 100 companies have been approved as requiring authorities.

The works provided by network utility operators generally have a higher public value than other land uses. The general public therefore benefits by having the activities provided efficiently. Designations also provide efficiently for large-scale projects and those which form linear networks (eg, gas pipelines, electricity lines).

4.1.3 Making submissions on notices of requirements – designations

The designation process does not allow requiring authorities to carry out their proposals without any consideration for people affected by a project or the environment in general. *Notices of requirement* for designations are submitted to territorial authorities to be included in district plans. Notices of requirement must be publicly notified, providing the public with an opportunity to make submissions. A notice of requirement must be accompanied by an assessment of environmental effects, extent of consideration of alternatives and a statement of consultation, amongst other matters.

The district or city council that receives a notice of a requirement for a designation must publicly notify the proposal, invite submissions, hear interested parties and make a recommendation to the



requiring authority on whether it should confirm or withdraw the requirement. It may recommend that conditions be attached to the designation. The requiring authority must then decide whether to accept, reject or modify the recommendation. Once the decision has been publicly notified, the council or any person who made a submission has a right of appeal to the Environment Court. If confirmed, the designation is shown in the district plan and operates as a rule to permit the work. Where a designation is included in a plan nothing can be done to the land without written consent from the requiring authority.

Existing designations (ie, those approved under previous legislation) are also subject to review through the district plan review process.

The designation process provides an opportunity for the public to have a say in the siting of major public developments such as motorways and airports. As there is no need for a resource consent for designated lands, there is no later opportunity to make a submission or object if you consider your concerns have not been met.

Designations tend to be relatively general in their description of the proposals they are catering for. The designation process basically allows for the concept to be approved while the details (such as building placement, landscaping and road design) are worked on. To provide certainty, requiring authorities must provide outline plans for public works and projects on designated land before construction begins. These plans must show the height, shape, bulk and location of the work, and details of parking, access and landscaping.

Like resource consents, designations have a built-in expiry date (five years unless otherwise specified or duly extended), and will generally be subject to conditions which control the work that can be carried out under the designation.

If your land is subject to a designation, you may be entitled to seek compensation under the Public Works Act. The Act recognises this by allowing affected landowners to apply to the Environment Court for an order that directs the requiring authority to acquire the land. It also provides network utility operators with an ability to acquire land that they need for designations under the Public Works Act. These proposals allow requiring authorities to purchase the required properties without having to obtain resource consent for a potentially large number of individual properties.

4.1.4 Making submissions on notified applications for resource consent

Anybody can make *submissions* on applications for resource consent that have been publicly notified. You may become aware of such proposals because the consent authority has notified you as a directly affected party, or you may learn about it through a public notice in the newspaper or on a sign put up at the site in question. In some cases, the council may decide to limit notification to those parties it considers may be affected by the proposal. In these cases, only those served with the notice may make a submission. Making a submission provides an opportunity for the council to address any concerns you may have about the proposal.

However, a number of concerns unrelated to environmental matters are not appropriate to pursue under the RMA, and are not valid grounds for a submission. For example, you cannot use the submission process to object to a trade competitor's proposal on the grounds that it would affect the commercial viability of your own business.

The resource consent process itself is outlined in Section 3 of this guide. The process for making submissions on notified resource consents is much the same as that for policy statements and plans (see Section 4.1.1). The only difference is that submissions must be lodged within 20 working days of public notification, and there is no opportunity to make further submissions. More detailed information on the proposal can be obtained from the applicant or the consent authority. You must provide both the council and the applicant with a copy of your submission. Again, you have a right of appeal to the Environment Court on the basis of the council's decision. Lodging a submission will not cost you and the consent authority will not charge you to consider it.

Councils may invite or require you to attend pre-hearing meetings. Should you be required to attend and you do not attend without reasonable excuse, the council may decline to consider your submission. The council may also ask for more information in relation to your submission either before or at the hearing. At the hearing, the council may also direct a person presenting a submission not to present the whole or part of the submission, if all or any part of it is irrelevant or not in dispute, or a timeframe for the presentation may be given.

From August 2007, a submission can be struck out if it is deemed to be frivolous, vexatious or contains no reasonable case. Accordingly, it is important to clearly state the adverse environmental concern to you.

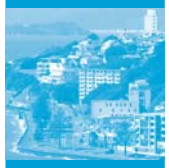
4.1.5 Giving written approval on non-notified applications for consent

You may be approached by an applicant for resource consent asking you to give *written approval* for what they propose to do. This may mean the consent authority has identified you as an affected party, and will not serve notice of the application if the applicant can obtain written approval from such parties. It may also indicate the applicant has identified you as potentially affected without the guidance of the consent authority.

> **The applicant should provide you with enough information about what they intend to do to enable you to make a measured and thoughtful response. Do not feel pressured to sign without due consideration, and contact the consent authority if you have any queries or concerns about the process. On the other hand, you must limit your consideration to the effects of the proposal in hand. Any personal feelings you may have about the applicant or other extraneous matters are irrelevant. Do not withhold approval for any other reason than a concern about the *environmental* effects of the activity (such as noise, pollution or overshadowing) that you feel have not been adequately addressed by the proposal. Again, feel free to discuss your concerns with the applicant and the consent authority before making a final decision. You may also like to talk to a lawyer, as if you give consent, you waive your rights to object later.**

4.1.6 Applying for a plan change

Once plans become operative they are not set in stone. Any person can request a *change* to a regional or district plan, or ask that a regional plan be prepared to address a particular issue. The council can move to change its own plan at any time. However, only a council or a Minister of the Crown may request a change to a regional policy statement. The request must specify a purpose and the environmental results anticipated from preparing the plan or implementing the change. In effect, an assessment of environmental effects must be prepared by the requester.



The council may, within 20 working days of your request, require further information to help it consider the proposal, specifying the reasons for the request. The applicant has the right to refuse to provide the further information requested and to require the authority to consider the request without that information. The council then has the ability to reject or decline the plan change request on the grounds of insufficient information. There are limited opportunities for the council to modify or refuse the plan change or to treat it as an application for resource consent. The council must decide which approach to take with the plan change within 30 working days of receiving all information. The council will probably seek to recover the cost of considering your request for a plan change from you. Any decision to refuse a plan change, or to treat it as a resource consent, can be challenged, firstly through an objection to the council and then through an appeal to the Environment Court.

You may ask for a change because you consider the plan fails to adequately provide for something you want to do, or fails to adequately address an environmental issue you consider significant. However, it is important to remember the plan change process can be a fairly time-consuming and resource hungry one. It may be more cost effective to pursue your landholding or business interests through the resource consent process. It is certainly recommended that you take the opportunity to make submissions on proposed plans whenever you can. You should seek legal or private planning advice about whether to pursue a plan change request.

This is not intended to put you off considering using the plan change process. Councils can take over plan changes suggested by interested parties which they believe have considerable wider public benefits. If the council agrees to the proposal, or is directed to agree by the Environment Court, the plan change goes through the standard process described above. Changes must be notified within four months of agreeing to the request or within the period directed by the Environment Court.

4.1.7 Appealing decisions on policy statements and plans

If you do not agree with a decision (or decisions) the council has made regarding either your submission on a plan or policy statement or plan change, or the plan change itself, you are able to lodge an appeal to the Environment Court (refer to Section 3.5.8 of this guide for details about lodging an appeal).

4.1.8 Applying for a declaration

Anybody may apply to the Environment Court for a *declaration*. Declarations are decisions made by the Court to help in the administration of the RMA. The declaration process is a useful way of seeking clarification or definition of matters relating to the RMA's operation. Declarations may cover such matters as:

» obtaining a legal interpretation of the wording or provisions of a plan, particularly where there is some dispute

» determining whether an activity holds existing use rights

» clarifying the extent of decision-makers' powers under the RMA, including any overlaps between them

- clarifying how far these agencies are expected to go in examining alternatives to regulation
- resolving inconsistencies between policy statements, plans and other instruments such as water conservation orders
- determining whether certain acts or omissions are likely to contravene the RMA, the plans prepared under it, or a resource consent
- issues relating to the interpretation, administration and enforcement of the RMA.

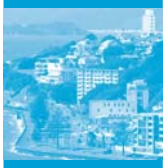
A limited process of public notification must be followed when declarations are sought, and the RMA also gives the Environment Court the ability to make, or decline to make, a declaration.

4.2 Other avenues

Outside the RMA, there are other ways you can influence decisions on environmental issues. The *Local Government Act 2002* requires councils to prepare annual plans showing how they intend to allocate their resources (and your rates) each year. Annual plans usually include the detailed programmes and costings for non-regulatory environmental initiatives that have been established in policy statements and plans prepared under the Act. Such initiatives may include incentive schemes to protect indigenous vegetation or to promote the planting of indigenous plants around people's properties or marae, street improvement programmes for the central business district, and recycling programmes. Councils are required to release draft versions of these plans and invite submissions from members of the public. You will be able to present your submission to councillors and staff if you wish to.

The Local Government Act 2002 requires local authorities to publicly notify significant proposals they are pursuing or agreeing to. The Act also requires local authorities to prepare a long term council community plan, which is prepared every three years. You are able to lodge a submission to these proposals/plans and present your submission much in the same way as the annual plan process. Visit Local Government New Zealand's website for information about how to participate in these processes: www.lgnz.co.nz/

The environmental monitoring reports regularly produced by councils are a useful basis for making submissions on both RMA policy statements and plans and annual plans. Councils are required to monitor the state of the environment and the effect of their own policy initiatives under the RMA. Most choose to prepare annual or biannual monitoring reports, which will provide a readable and informative summary of local environmental issues, and a good starting point for making a submission.



5 Taking Action to Protect the Environment

5.1 Everybody is a steward

The RMA places a responsibility on all New Zealanders to act in an environmentally responsible way – to be a steward of the environment. The RMA is an *enabling* piece of legislation, in that it places few limitations on the tools that decision-makers can use to address environmental issues. If anything, it encourages innovative and cost-effective solutions to particular problems.

While the RMA does not direct which options or tools decision-makers should adopt, it does allow for public input into the choices that are made. Decision-makers are expected to consult with the people who will be most affected by the use of those tools. Your opportunities to influence the framework of resource management through the plan production and resource consent process have been described in Section 4 of this guide.

The job of environmental protection is not left entirely to specialist agencies acting on behalf of a passive community. The RMA actively encourages New Zealanders to take responsibility for sustainably managing the environment. On the one hand, it creates obligations which are the basis for the RMA's enforcement provisions. On the other hand, it provides opportunities for people to take direct action to protect the environment. Your obligations and opportunities are described below.

5.2 Addressing your obligations

The RMA provides enforcement tools to ensure any breaches or irresponsible behaviour in terms of the use of natural and physical resources are dealt with appropriately.

5.2.1 Abatement notices

Councils can issue written *abatement notices* requiring environmental nuisances to be fixed or actions taken, or ceased, to ensure compliance with the RMA. Abatement notices can be issued regardless of whether there is a valid resource consent if the activity is so noxious, dangerous, offensive or objectionable that it is likely to have an adverse effect on the environment. An activity has an adverse effect on the environment if a reasonable person would be offended or find an activity objectionable.

If you are served with an abatement notice you must take action within the period specified in the notice. This allows you to find the most appropriate way of addressing the problem. You have a right to appeal the issuing of an abatement notice to the Environment Court. Lodging an appeal may act as a stay on the notice (the notice is put on hold until the appeal is dealt with) if the activity you are engaged in complies with the RMA. Otherwise, you can apply to the Environment Court for a stay. If you fail to act on an abatement notice you will be committing an *offence* under the RMA. Nearly 900 abatement notices were issued by councils during the 2003/04 financial year.

Example

You are contacted by a council enforcement officer who advises you the car workshop you recently established in your suburban garage requires a resource consent and is generating complaints from neighbours who are concerned about engine noise and the sight of partly dismantled cars parked on your front lawn. The enforcement officer tells you that you will shortly be served with a written abatement notice requiring you to cease working on cars and clear the property within 10 working days. The officer makes clear that a failure to comply with these requirements would constitute an offence and that in such a situation the council may take you to court.

The officer may also advise you that if you wish to recommence work you will need to apply for, and obtain, a resource consent or, alternatively, seek a new location for your enterprise where it is a permitted activity in the district plan. The officer suggests that you come into the council's offices to discuss the matter further.

5.2.2 Enforcement orders

Anybody can apply to the Environment Court for an *enforcement order* that, among other things, can require a person to stop an activity that contravenes the RMA, to do something to ensure compliance, or to avoid adverse effects. Enforcement orders are intended to deal with more serious and ongoing pollution problems than those covered by abatement notices. All directly affected parties (including the person to whom the order relates) must be publicly notified by the applicant, and the Environment Court will hold a hearing to allow the parties to be heard. The Environment Court then makes a decision. Once again, failure to comply with an enforcement order constitutes an *offence*.

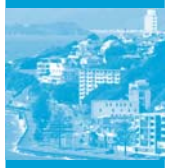
To deal with emergency situations, anybody can apply for an *interim enforcement order*, which can be issued by an Environment Judge sitting alone or as a District Court Judge. This stays in force until it is cancelled or a full enforcement order is determined through the normal procedure. Such orders can only be issued when significant environmental damage is happening or is about to happen.

5.2.3 Excessive noise directions

Excessive noise is often short-lived, but can cause great disturbance. Council enforcement officers need to move quickly to deal with complaints triggered by, for instance, loud stereos at parties. The RMA allows enforcement officers to issue *excessive noise directions*. Excessive noise is defined as, among other things, any noise that can *unreasonably interfere with the peace, comfort and convenience of any person*. The directions can be issued either verbally or in writing. If you fail to immediately comply with a direction, your equipment can be turned off or seized. Common sense dictates that you should respond positively to reasonable complaints when your neighbours first make them.

5.2.4 Infringement offences

The RMA allows council enforcement officers to issue *infringement notices* which detail the nature of the alleged offence and state a fee that you must pay to the council. Infringement offences aim to make people more aware of the adverse effects of their activities through imposing a fine. In this respect, they are a little like the traffic infringement notices issued by New Zealand Police.



5.2.5 Other mechanisms

The RMA provides other mechanisms for dealing with immediate environmental problems. In the event of a serious water shortage, a regional council is able to issue a *direction* requiring any use of a water source (such as water takes, diversions or as a destination for discharges) to be restricted or suspended for a maximum of 14 days. This can happen even if the user in question has obtained a resource consent. Consent authorities are also able to enter any place and carry out *emergency works* to prevent an adverse effect on the environment. The cost of carrying out such works can then be recovered from the person responsible for causing the original problem.

The RMA also sets out the way in which enforcement officers are appointed, their powers of entry, their ability to demand information and procedures for returning property.

5.2.6 Offences

Under the RMA every person commits an *offence* if what they do or allow to happen is against the general duties and restrictions that the RMA establishes. It is also an offence to contravene the terms of an abatement notice, enforcement order or other enforcement tool. When somebody wilfully obstructs, hinders, resists or deceives any person with statutory powers (such as an enforcement officer) or fails to act cooperatively before the Environment Court they also commit an offence. Procedures relating to offences against the RMA are heard by an Environment Court Judge sitting alone in the District Court or by a District Court Judge given permission by the Chief District Court Judge.

5.2.7 Liability

In terms of *liability*, it does not matter that a person was unaware of the offence or that it was carried out unintentionally. The RMA does not require proof of intention; only that the person carried out the offence. The onus is therefore placed on the person responsible for the offence to make themselves aware of their environmental obligations. Protestations of ignorance are not an acceptable defence. Accordingly, contractors, consent holders and other parties may all be liable for such offences. Only the following limited defences against prosecution are offered under the RMA:

» that the action: had to be taken to save or protect health or lives, prevent serious property damage or avoid adverse environmental effects; that the actions were reasonable in the circumstances; and that the person responsible really did attempt to address the effects of their actions

» that the offence happened because of an event beyond the control of the person (such as natural disaster) which could not have reasonably been foreseen and that, once again, the person took action to address the effects of the event.

In addition, the RMA is quite clear that employers, company directors and management may be held personally liable for offences for which they gave permission and which they knew, or could reasonably be expected to have known, were to be or were being committed. An employer, company

director or manager may have a defence against being prosecuted for the actions of another person, for example an employee, if they can show:

» they did not know, or could not reasonably have been expected to know, that the offence was being committed

» they took all reasonable steps to prevent or stop the offence.

5.2.8 Penalties

Significant *penalties* may be imposed on a person who commits an offence under the RMA. Depending on the type of offence, those who are convicted could be jailed for up to two years or face a fine not exceeding $200,000. If the offence continues, further fines of up to $10,000 per day may be imposed. Fines are paid to the local authority that started the prosecution.

Since the RMA came into force, the Courts have convicted a considerable number of individuals and companies under its provisions and imposed fines of tens of thousands of dollars in individual cases. Imprisonment has also been imposed on at least one occasion for a repeat offender.

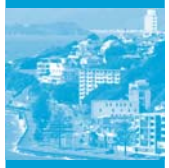
5.3 Taking a proactive approach

The risks associated with acting in an environmentally irresponsible manner are clear. The RMA establishes a firm basis for liability, and provides only limited defences to people prosecuted for offences under the RMA. The penalties are potentially severe. The fines imposed to date are only part of the picture. Court and solicitor costs can be awarded against defendants if convicted. In addition, the Court may require offenders to take remedial action to repair the damage they have caused. The costs of such remediation can be well in excess of the fines that are imposed.

More difficult to quantify but potentially even more damaging, is the impact of a conviction on the reputation of a company or individual. This can be highly detrimental as, increasingly, consumers are making product choices on the basis of a company's environmental standing.

Individuals and companies can do a lot to manage their liability and minimise the likelihood of mishaps, accidents or failures that result in environmental damage. Many larger companies or those engaged in activities with a relatively high element of environmental risk carry out environmental audits of their operations or undertake to design and implement *environmental management systems*. Apart from identifying areas that need to be fixed, these mechanisms can also be used to establish a defence of due diligence; meaning that all reasonable steps have been taken to minimise the chance of an offence occurring. For smaller businesses, and individuals, the best approach may be to contact your local regional council and city or district council to discuss what aspects of your day-to-day activities may present some risk that needs to be addressed.

You can also consider your environmental obligations before buying or selling property or businesses. Council staff will be able to advise you whether the asset you are planning to buy or sell generally complies with their requirements and, if not, what action might be needed to ensure that it does. Land information memoranda can be obtained from a city or district council detailing, for instance, the consent conditions attached to a particular property.



5.4 Protecting the wider environment

A number of formal opportunities under the RMA allow people to take a positive and proactive role in protecting parts of the environment outside their own immediate interests or landholdings.

5.4.1 Applying for an enforcement order

The process of issuing an *enforcement order* has already been described earlier in this section. Applying to the Environment Court for an enforcement order is certainly an option for anybody concerned about a serious environmental problem. You should be aware that the *applicant* has the burden of proving the adverse effect on the environment and a failure to comply with the relevant requirements. Applications to the Environment Court should not be made lightly, and you should consider all the options available to you before proceeding.

Laying a complaint with the appropriate council may be a simpler means of pursuing your concerns. Councils are required to maintain a register which details how complaints are dealt with and have more enforcement options open to them than do members of the public. Most regional councils maintain a 24-hour pollution hotline. While councils are the main organisations responsible for enforcing the provisions of the RMA, in reality they rely heavily on the 'eyes and ears' of their communities to inform them of local environmental problems.

5.4.2 Applying for a water conservation order

Any person may apply to the Minister for the Environment for a *water conservation order*. Such orders aim to recognise the outstanding amenity or intrinsic values water provides, in either a natural or modified state. They can be used to preserve that natural state or protect characteristics such as the water body's value as a habitat or fishery, its wild and scenic nature, or its value for recreational, historic, spiritual, cultural or scenic purposes. A water body may also be particularly significant to Māori. Orders may be applied over rivers, lakes, streams, ponds, wetlands, geothermal water or aquifers. If granted by the Minister, a water conservation order can restrict or prohibit takes, discharges and other uses of the water.

Applications to the Minister must set out the reasons for the application. If the Minister does not reject the application, then a special tribunal must be appointed to hear and report on the application. The tribunal is responsible for publicly notifying the application, calling for submissions, holding a hearing and reporting on its decisions. Submissions must be lodged within 20 working days of public notification. Any person may make a submission, and has a further right of submission on the tribunal's decision to the Environment Court. The Environment Court may hold an inquiry, but in any case must report to the Minister recommending the tribunal's report be accepted, rejected or amended.

If the Minister does not accept the Court's recommendation to proceed with the order then they must table this decision, along with reasons, in the House of Representatives. If, however, the Minister accepts the Court's recommendation to proceed then they recommend to the Governor-General that the order be made.

While an order cannot affect existing resource consents, the affected councils must take it into account in preparing policy statements and plans and considering future applications for resource consent. Water conservation orders were recently issued for the Motueka and Mohaka Rivers.

You should consider all the options available to you before applying for a water conservation order. Talk to your regional council. Your interests in protecting a water body may best be pursued through the provisions of a regional plan.

5.4.3 Applying for heritage protection authority status

Heritage protection orders are similar to designations in that they are a way of incorporating notices of particular requirements into district plans. Heritage protection orders are intended to protect features and places of:

» special interest, character, intrinsic or amenity value or visual appeal

» cultural, architectural, historical, scientific or ecological interest

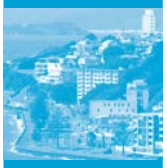
» special significance to tāngata whenua for spiritual, cultural or historic reasons.

Only *heritage protection authorities* can issue notices for heritage protection orders. The RMA identifies Ministers of the Crown, councils and the New Zealand Historic Places Trust as heritage protection authorities. It also allows any *body corporate* to apply to the Minister for the Environment for status as a heritage protection authority. Body corporates include companies, incorporated societies, charitable trusts and Māori incorporations. Before approving a body as a heritage protection authority, the Minister must be satisfied that it will be able to discharge its functions effectively (including from a financial perspective). The Minister can revoke an approval if unhappy with the performance of a heritage protection authority.

The process for notifying a district or city council of a heritage protection order is similar to that for designations (see Section 4.1.2 of this guide). The same notification, submission-making, hearing, recommendation, decision, appeal and compulsory acquisition provisions apply. Once a requirement for a notice has been issued, no one can do anything that would contravene the order. The heritage protection authority does not need to own the land over which it seeks an order.

Since the enactment of the RMA, four body corporates have been made heritage protection authorities, including the Royal Forest and Bird Protection Society and the Erskine College Trust.

Other options are available to protect elements of heritage. The Department of Conservation, the New Zealand Historic Places Trust and the Queen Elizabeth II National Trust can advise you on voluntary agreements. District plans are an important way for district and city councils to seek to protect heritage, and you should consider making submissions on such documents as the opportunity presents itself.



6 Where to Go for Further Guidance

6.1 Councils

If you are thinking of buying some land or an existing business, building a structure, extending an existing building, or establishing a new business, then your first point of contact should be the local *district or city council* (see Appendix 2 for administrative boundaries).

You should speak to staff from the *regional council* if your proposal, for example:

» is located on the coast or in the bed of a river, lake or stream

» involves large earthworks during the construction phase

» uses plant or processes which use and discharge water or release heat, smoke or other airborne elements

» is located on land, which you know or suspect may have been used by potentially contaminating activities in the past.

Council staff will be able to advise you about any outstanding issues in relation to the property or business you are proposing to purchase, and any plan requirements (such as resource consents) that you may be subject to. You can request project and land information memoranda from the council (you are likely to be charged for these services). Most councils also have basic information about the resource consent process.

You should also contact the regional council if you discover a pollution problem (whether on your own land or somebody else's), or the district or city council if you have any complaints about noise or a neighbour's activities. Councils are also an important source of advice if you are approached by someone seeking your written approval for something they want to do, or if you wish to make a submission on a resource consent application, policy statement or plan. Councils are also a useful source of advice and information about environmental grant programmes.

6.2 Ministry for the Environment

The *Ministry for the Environment* advises the Government on the environment and anything that might affect it. It is responsible for administering the RMA, and helps the Minister for the Environment carry out their statutory powers under the RMA.

The Ministry has *An Everyday Guide to the RMA* series of booklets about everyday matters under the RMA. These booklets and other information on the RMA is available on www.rma.govt.nz/

To find out more about the Ministry for the Environment visit: www.mfe.govt.nz or phone (04) 439 7400.

The Quality Planning website is another useful resource which aims to promote best practice amongst resource management practitioners. For more information visit: www.qualityplanning.org.nz/about.php

6.3 Department of Conservation

If you wish to establish a commercial operation or gain access to a property across land administered by the *Department of Conservation* you will need to contact the local conservancy of the Department of Conservation (see Appendix 3 for administrative boundaries). You should also contact the conservancy office if you are proposing to carry out an activity on the coast. The conservancy office is also a useful source of advice if you are proposing to clear land or need information on local habitats for indigenous species of plants and animals.

6.4 Department of Internal Affairs

The Local Government Directorate of the *Department of Internal Affairs* is directly responsible for overseeing the operation of the local government sector. Found in the *Blue Pages*, the directorate can offer advice on your dealings with councils or visit www.dia.govt.nz, or phone (04) 495 7200.

6.5 Parliamentary Commissioner for the Environment

If you have a complaint about the way a council or any other public body has handled an environmental problem that you have reported to it, or the way it has dealt with a query, resource consent application, or submission, you should consider approaching the *Office of the Parliamentary Commissioner for the Environment*. The Commissioner has the power to investigate the performance of public bodies in relation to their functions under the RMA. The Commissioner is located in Wellington and can be contacted by phone on (04) 471 1669 or by fax on (04) 495 8350, visiting www.pce.govt.nz, or by writing to PO Box 10 241, Wellington.

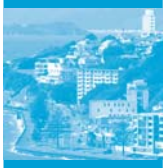
6.6 Iwi/hapū

You may wish to approach the iwi/hapū in your area to discuss a proposal. The local council or local Ministry of Māori Development (Te Puni Kōkiri) office should be able to direct you to the appropriate people to talk to.

Te Kāhui Māngai is a web-based directory of Māori organisations whose mandates to represent their iwi and hapū have been recognised by the Government. The directory can be viewed at: www.tekahuimangai.govt.nz/

6.7 Business associations

Many *industry groups* and *business associations* such as the Chemical Industry Council and the Tourism Industry Association of New Zealand may have staff with considerable experience in resource management matters and a good understanding of the needs of their members. If you are a member of such a group or association you should also consider contacting them. They will not only be able to provide guidance on specific matters, but may represent you and your colleagues in making submissions to both central and local government on the implementation of the RMA.



6.8 Community assistance

Some larger metropolitan areas have *community law centres* which provide free legal advice, advocacy, and information services on resource management and other matters to members of the public. The centres are staffed by professionals who donate their time and expertise. You may also wish to approach your local *citizens advice bureau*, which can also offer basic assistance or refer you to specialists in the field.

6.9 Obtaining professional assistance

Consultants with experience in planning/resource management processes can be sourced from the planning, resource management, surveying, engineering, architectural and legal fields. They can help:

» prepare submissions on resource consent applications, plan changes, and policy statements and plans

» prepare applications for requiring authority status

» determine how to respond to enforcement action.

Directories of consultants are available from their professional institutes, including the *New Zealand Planning Institute,* the *Resource Management Law Association*, the *New Zealand Institute of Surveyors*, the *Institution of Professional Engineers in New Zealand*, the *Institute of Architecture*, and the *New Zealand Institute of Landscape Architects*. You can also obtain a list of local consulting firms by referring to the Yellow Pages or visit: www.rma.govt.nz for more information.

There are no hard and fast rules about when such assistance may become necessary. Your own ability to spend time in identifying statutory requirements and preparing applications and submissions will of course be a factor, as well as the nature, scale and complexity of the application. Particularly complex proposals with potentially significant environmental effects (such as large land developments or large volume discharges) may necessitate the involvement of specialists such as hydrologists or ecologists. Consultants can coordinate and manage the involvement of such specialists.

The majority of initial discussions with consent authorities, and the applications that follow, are carried out without any need for professional assistance. The consent authority should be seen as the best first source of guidance.

Appendix 1:

Matters of National Importance and Other Matters

Resource Management Act 1991 (RMA)

Section 6: Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga.

(f) The protection of historic heritage from inappropriate subdivision, use, and development.

(g) The protection of recognised customary activities.

Section 7: Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to –

(a) Kaitiakitanga:

(aa) The ethic of stewardship:

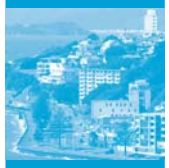
(b) The efficient use and development of natural and physical resources:

(ba) The efficiency of the end use of energy:

(c) The maintenance and enhancement of amenity values:

(d) Intrinsic values of ecosystems:

(e) [repealed]



(f) Maintenance and enhancement of the quality of the environment:

(g) Any finite characteristics of natural and physical resources:

(h) The protection of the habitat of trout and salmon:

(i) The effects of climate change:

(j) The benefits to be derived from the use and development of renewable energy.

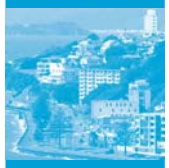
Section 8: Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

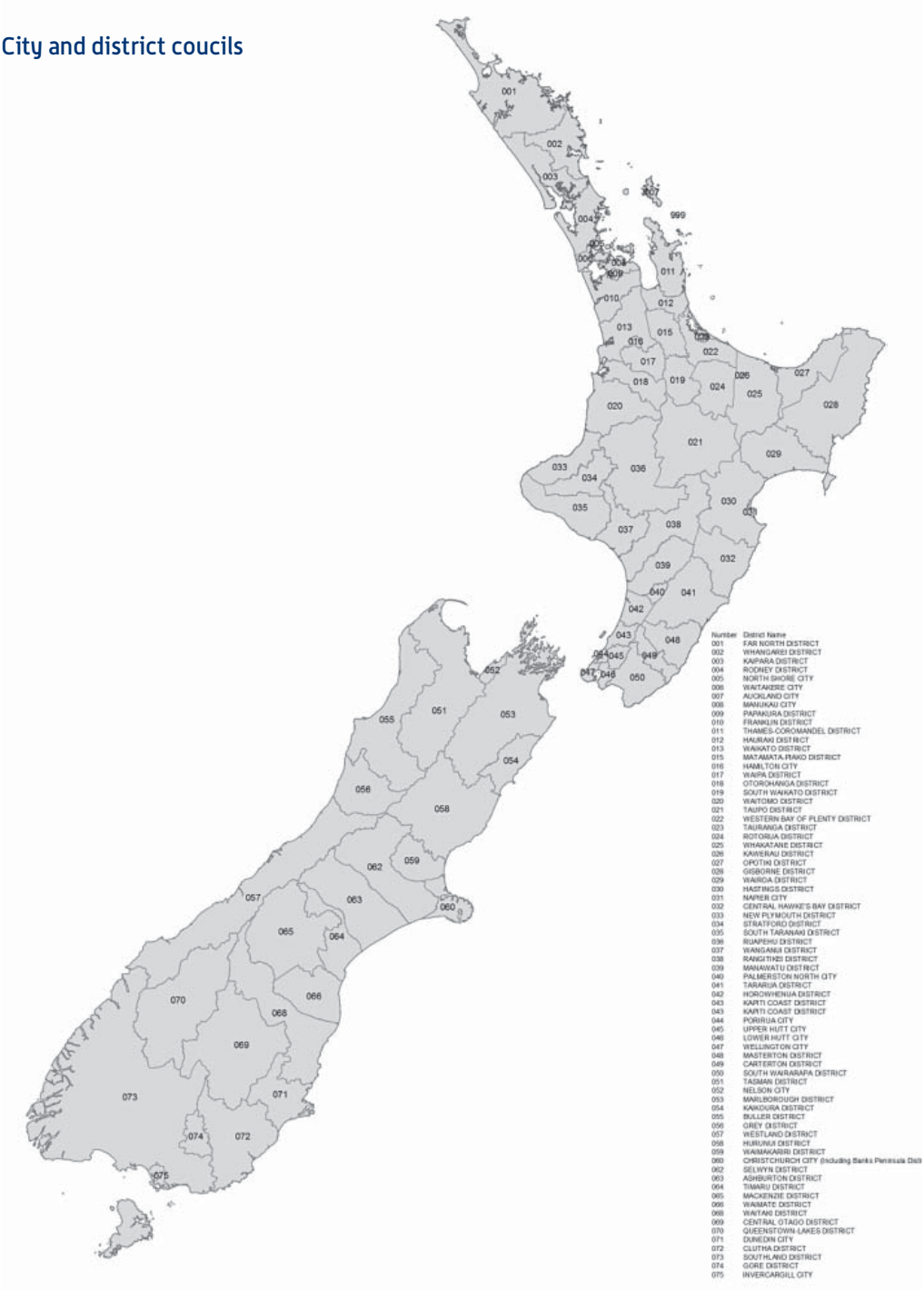
Appendix 2:

Administrative Boundaries for City, District and Regional Councils

Regional coucils



City and district coucils

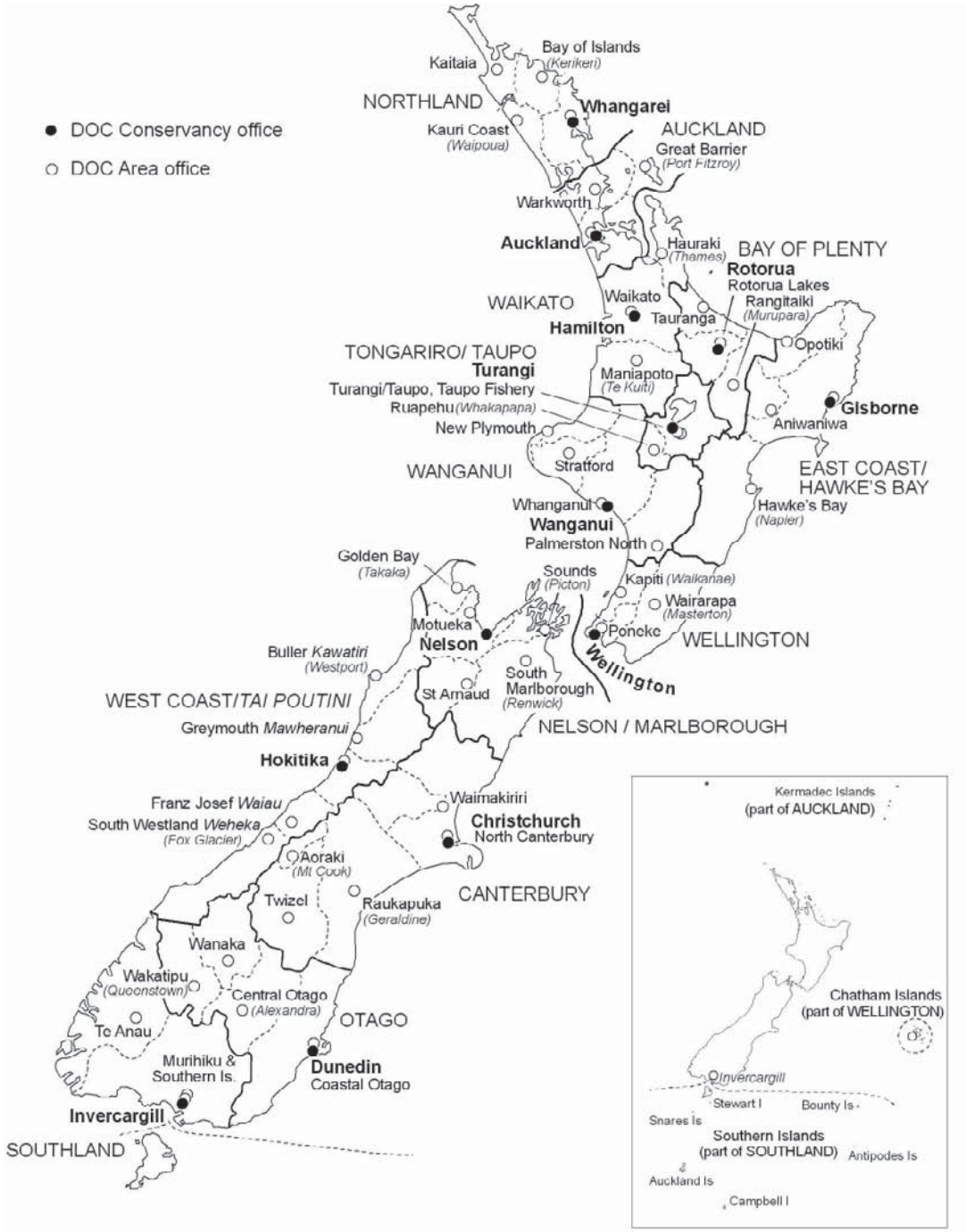


Number	District Name
001	FAR NORTH DISTRICT
002	WHANGAREI DISTRICT
003	KAIPARA DISTRICT
004	RODNEY DISTRICT
005	NORTH SHORE CITY
006	WAITAKERE CITY
007	AUCKLAND CITY
008	MANUKAU CITY
009	PAPAKURA DISTRICT
010	FRANKLIN DISTRICT
011	THAMES-COROMANDEL DISTRICT
012	HAURAKI DISTRICT
013	WAIKATO DISTRICT
015	MATAMATA-PIAKO DISTRICT
016	HAMILTON CITY
017	WAIPA DISTRICT
018	OTOROHANGA DISTRICT
019	SOUTH WAIKATO DISTRICT
020	WAITOMO DISTRICT
021	TAUPO DISTRICT
022	WESTERN BAY OF PLENTY DISTRICT
023	TAURANGA DISTRICT
024	ROTORUA DISTRICT
025	WHAKATANE DISTRICT
026	KAWERAU DISTRICT
027	OPOTIKI DISTRICT
028	GISBORNE DISTRICT
029	WAIROA DISTRICT
030	HASTINGS DISTRICT
031	NAPIER CITY
032	CENTRAL HAWKE'S BAY DISTRICT
033	NEW PLYMOUTH DISTRICT
034	STRATFORD DISTRICT
035	SOUTH TARANAKI DISTRICT
036	RUAPEHU DISTRICT
037	WANGANUI DISTRICT
038	RANGITIKEI DISTRICT
039	MANAWATU DISTRICT
040	PALMERSTON NORTH CITY
041	TARARUA DISTRICT
042	HOROWHENUA DISTRICT
043	KAPITI COAST DISTRICT
043	KAPITI COAST DISTRICT
044	PORIRUA CITY
045	UPPER HUTT CITY
046	LOWER HUTT CITY
047	WELLINGTON CITY
048	MASTERTON DISTRICT
049	CARTERTON DISTRICT
050	SOUTH WAIRARAPA DISTRICT
051	TASMAN DISTRICT
052	NELSON CITY
053	MARLBOROUGH DISTRICT
054	KAIKOURA DISTRICT
055	BULLER DISTRICT
056	GREY DISTRICT
057	WESTLAND DISTRICT
058	HURUNUI DISTRICT
059	WAIMAKARIRI DISTRICT
060	CHRISTCHURCH CITY (including Banks Peninsula Dist
062	SELWYN DISTRICT
063	ASHBURTON DISTRICT
064	TIMARU DISTRICT
065	MACKENZIE DISTRICT
066	WAIMATE DISTRICT
068	WAITAKI DISTRICT
069	CENTRAL OTAGO DISTRICT
070	QUEENSTOWN-LAKES DISTRICT
071	DUNEDIN CITY
072	CLUTHA DISTRICT
073	SOUTHLAND DISTRICT
074	GORE DISTRICT
075	INVERCARGILL CITY

For more information about local councils visit: www.localcouncils.govt.nz and www.lgnz.co.nz/

Appendix 3:

Administrative Boundaries for the Department of Conservation



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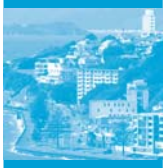


Appendix 4:

Glossary of RMA Terms

Abatement notice requires compliance with the RMA within the time specified in the notice. Only councils can issue these to get someone to stop or to start doing something.

Appellant is a person, group or organisation who lodges an appeal with the Environment Court.

Applicant is a person, group or organisation who applied for a resource consent.

Assessment of environmental effects is a report that must be given to the council with your resource consent application. It outlines the effects that the proposed activity might have on the environment.

Certificate of compliance is confirmation that your activity is permitted by the council and does not need a resource consent.

City or district councils are primarily responsible for managing the environmental effects of activities on land.

Department of Conservation administers land under the Conservation and National Parks Acts and has a role under the RMA overseeing the management of the coastal environment.

Designations are provisions in a district plan which provide notice to the community of an intention by the council or a requiring authority to use land in the future for a particular work or project.

District plans must be prepared by city or district councils to help them carry out their functions under the RMA.

Enforcement order is another way of getting someone to comply with the RMA. It differs from an abatement notice in that anybody (not just the council) can apply for an enforcement order against somebody else. These are issued by the Environment Court rather than the council.

Environment includes –

a. ecosystems and their constituent parts, including people and communities, and

b. natural and physical resources, and

c. amenity values, and

d. the social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs a to c of this definition or which are affected by those matters.

Environment Court is a specialist Court where people can go to appeal decisions made by councils on either a policy statement or plan, or on a resource consent application, or apply for an enforcement order.

Excessive noise directions are issued by a council to get people to reduce an excessive noise to a reasonable level.

Existing use certificate is useful when an existing activity doesn't meet a current district or regional plan rule, but was lawfully established before the rule came into force.

Further submission provides an opportunity for people to comment on other people's original submissions on a proposed plan, plan change or variation either by supporting or opposing those submissions.

Heritage orders are provisions in a district plan to protect the heritage characteristics of a particular place.

Infringement notice is an instant fine that is issued for relatively minor environmental offences.

Land information memorandum is issued by a council and will tell you what information the council has about that piece of land.

Limited notification means that only those persons who are adversely affected by an application are notified of the application by the council and can make a submission on a resource consent application.

Ministry for the Environment provides advice to the Government on policies, laws and other means to improve environmental management in New Zealand.

National environmental standards are tools used to set nationwide standards for the state of a natural resource. For example 14 standards for the prevention of toxic emissions and the protection of air quality were introduced in October 2004.

National policy statement provides national policy guidance for matters that are considered to be of environmental importance, for example the coastal environment.

Natural and physical resources include land, water, air, soil, minerals, energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures.

Parliamentary Commissioner for the Environment is an independent adviser to the Government on environmental issues. The Commissioner investigates emerging environmental issues and concerns from the public.

Party is a person, group or organisation in an appeal or other legal proceedings.

Plan change is the process that councils use to prepare changes to an operative plan.

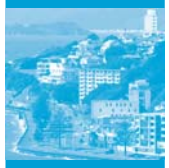
Private plan change is a plan change initiated by any person to an operative council plan.

Project information memorandum is issued by the city or district council and contains information relating to the location of the building and whether it will need a resource consent or not.

Public notification means a notice published in a newspaper or notice sent to every person the council thinks may be affected by a proposed plan, plan change or variation.

Publicly notified resource consent means that any person can make a submission on the consent application.

Regional councils primarily manage resources like the air, water, soils and the coastal marine area.



Regional plans can be prepared by regional councils if they want to use them to help manage the resources for which they are responsible.

Regional policy statements must be prepared by all regional councils and help set the direction for the management of all resources across the region.

Resource consent is permission from the local council for an activity that might affect the environment, and that isn't allowed 'as of right' in the district or regional plan.

Resource Management Act 1991 (RMA) is New Zealand's main piece of environmental legislation and provides a framework for managing the effects of activities on the environment.

Respondent is the person or group against whose decision or actions a case has been lodged with the Environment Court.

Submission outlines your written comments, opinions, concerns, support, opposition or neutral stance about a proposed development, a notice of requirement for a designation, or a proposed policy statement or plan.

Sustainable management means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economical and cultural wellbeing and for their health and safety while:

a. sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations, and

b. safeguarding the life-supporting capacity of air, water, soil and ecosystems, and

c. avoiding, remedying or mitigating any adverse effects of activities on the environment.

Unitary authorities carry out the roles of both regional and district councils.

Variation is a change prepared by a council to a proposed plan.

Working day means any day except for a weekend day, public holiday, and those days between 20 December and 10 January.

Appendix 5:

Glossary of Māori Terms

Hapū	Subtribe, section of a large tribe, clan, secondary tribe, the local tribe.
Iwi	Tribe, people, the people as a whole, the parent tribe.
Iwi authority	For the purposes of the RMA iwi authority is defined in section 2 as: the authority which represents an iwi and which is recognised by that iwi as having authority to do so.
Kaitiakitanga	Stewardship, guardianship. For the purposes of the RMA kaitiakitanga is defined in section 2 as: the exercise of guardianship by the tāngata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship.
Kawa	Protocol.
Mana	Authority, control, influence, prestige, power, psychic force, effectual binding authority, be effectual, take effect, be avenged.
Mana whenua	Customary rights and prestige and authority over land. For the purposes of the RMA mana whenua means customary authority exercised by an iwi or hapū in an identified area.
Mauri	Life principle, source of emotions, talisman, a material symbol of the hidden principle protecting vitality, mana, fruitfulness, etc of people, lands and forests.
Papakainga	Hapū estate, settlement.
Rāhui	Restriction or enforcement over a resource as a means to enhance the mauri of that resource.
Rohe	Boundary, territory, tribal region, district.
Tāngata whenua	People of the land, people of a given place. For the purposes of the RMA, tāngata whenua, in relation to a particular area means the iwi, or hapū, that holds mana whenua over that area.
Taonga	Sacred treasure, prized possession, property, anything which is highly prized.
Tikanga Māori	For the purposes of the RMA means Māori customary values and practices.
Wāhi tapu	Sacred place.
Whakapapa	Genealogy, line of descent.

Definitions of terms derived from Waitangi Tribunal Reports and *Dictionary of the Māori Language*, HW Williams, GP Publications Ltd, 7th edition, reprinted 1992. Unless otherwise stated, these terms are not defined in the RMA. Care should be taken when relying on such definitions in an RMA context. The Ministry for the Environment will not be held responsible for any action arising out of the use of this glossary.

Disclaimer:

Although every effort has been made to ensure that this guide is as accurate as possible, the Ministry for the Environment will not be held responsible for any action arising out of its use. If the reader is uncertain about the issues raised in the guide then direct reference should be made to the Resource Management Act and expert guidance sought if necessary.

Published in January 1999 by the
Ministry for the Environment
Manatū Mō Te Taiao
PO Box 10362, Wellington, New Zealand

Updated July 2004, August 2006

ISBN: 0-478-30101-4
Publication number: ME 766

This document and other information on the RMA is available on:

www.rma.govt.nz

For more information on the Resource Management Act visit

www.rma.govt.nz

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