

ROLES AND RESPONSIBILITIES

UNDER

**THE RESOURCE MANAGEMENT
ACT 1991**

A GUIDE FOR LOCAL GOVERNMENT POLITICIANS

*Prepared by: Paula Hunter and Sylvia Allan
Montgomery Watson NZ Ltd*

PREFACE

This guide forms part of a professional development programme prepared for local government politicians on their roles and responsibilities under the requirements of the Resource Management Act 1991 (RMA). The guide in conjunction with a national seminar series is designed to assist councillors and community board members (particularly first time councillors and members) in understanding their role in implementing the RMA and in particular their responsibilities as decision makers.

Funding for developing and implementing the professional development programme has been provided from the Sustainable Management fund of the Minister for the Environment.

Professional expertise in the development and implementation of the programme has been provided by:

- New Zealand Planning Institute
- New Zealand Law Society
- Local Government New Zealand
- Ministry for the Environment

In preparing the guide, account has been taken of the possibility that the RMA will be amended in the near future. The guide has been designed to easily be updated to accommodate any amendments to the RMA.

The purpose of the guide is to:

- introduce councillors and community board members to the overall philosophy, requirements and procedures of the RMA
- identify councils' functions under the RMA
- provide an introduction to and a support document for the national seminar series
- provide a reference document for councillors and community board members when preparing for and attending hearings.

OVERVIEW

Councillors and community board members are authorised to exercise powers and functions under the RMA.

Introduction

Decisions of Council Committees involved in implementing the RMA (ie. hearings committees, regional/district plan committees) have far reaching effects on communities and on the resources of an area. These can range from, for example, effects on individual property owners as to how they use their land, right through to effects on large corporations in terms of major developments and projects. As a consequence, Councils have responsibilities to ensure that all decisions are made in an informed, consistent and transparent manner. Decisions made under such circumstances will result in the effective and efficient administration of the RMA, better environmental outcomes and the promotion of sustainable management.

This resource kit, combined with the national seminar series has been designed to provide local government politicians with information and skills to make sound decisions in accordance with the requirements of the RMA.

***What is the
Resource
Management
Act?***

The RMA is a single overriding Act which sets up a resource management system that promotes the sustainable management of natural and physical resources.

The RMA is the principal statute for the management of land, structures, subdivision, water, soil, the coast, energy, air and pollution control including noise control. It sets out the rights and responsibilities of individuals, councils, and central government.

The purpose of the RMA is to promote the sustainable management of natural and physical resources. This purpose applies to every part of the Act and everyone (including councillors and community board members) who exercises functions and powers under the Act must ensure this purpose is promoted. The RMA is focused on the effects of resource use and is concerned with, among other matters, ensuring that the adverse effects of any activity on the environment are avoided, remedied or mitigated.

¹ "Person" includes the Crown, corporation sole, and also a body of persons, whether corporate or incorporate.

***How the RMA
Works***

The RMA sets up a planning system under which regional and district councils prepare and administer plans. These plans can allow activities "as of right", require activities to first obtain resource consent before establishing or prohibit activities from an area altogether. The manner in which an activity is treated in a plan depends largely on its potential effects and the type of environment envisaged by the local community for a given area.

Each community is responsible for the development of its own plan. As such, plans can differ widely from district to district and region to region. It does not simply follow that because an activity is permitted in one district it will automatically be permitted in another.

The RMA sets in place a framework for assessing resource consent applications (ie. consents for activities which a plan does not allow "as of right"). This framework includes information to be provided with applications, procedures for processing applications and matters which councils must address in making decisions on whether to grant or decline a resource consent application.

In terms of the procedures which must be followed in the preparation and consideration of plans and applications, the Act provides extensive opportunities and requirements for consultation and involvement of affected parties, tangata whenua and the wider community.

The concept of sustainable management, and responsible environmental practices, are fundamental to the exercise of any powers under the Act or the utilisation of resources. The RMA prevents any use of land in a manner that contravenes a rule in a plan unless the use has been allowed for by way of a resource consent. It also restricts the use of water, river and lake beds, the coastal marine area or the discharge of contaminants into the environment unless such activities have been expressly provided for in a plan. The Act does however, allow for certain emergency works to override these restrictions.

The RMA contains an overriding requirement that every person¹ has a duty to avoid, remedy or mitigate any adverse effect on the environment arising from an activity carried out by or on behalf of the person. This applies whether an activity is allowed as of right by a plan or has been granted a resource

consent.

PART II

***What is
Sustainable
Management?***

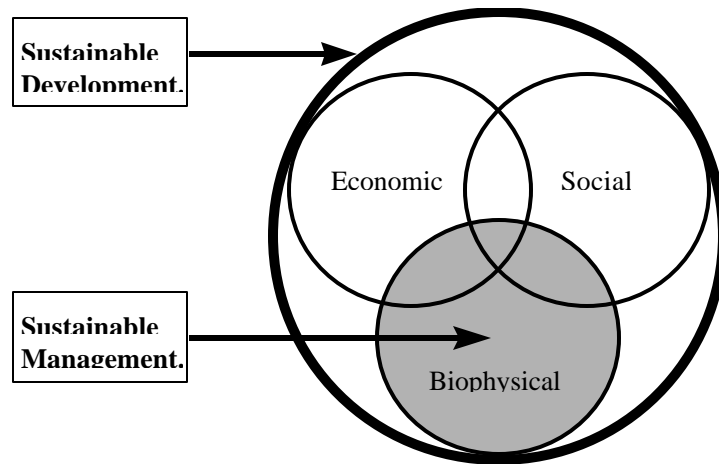
Sustainable management is defined in the Act as meaning the management of resources in a way or at a rate which enables people and communities to provide for their economic, cultural and social well being while sustaining the potential of resources for future generations, protecting the life supporting capacity of ecosystems and avoiding, remedying or mitigating adverse effects on the environment.

Sections 5, 6, 7

The purpose of the Act is to “promote” sustainable management, which recognises that achievement of the concept may not be immediate. The concept of sustainable management is not enforceable against any person or body. However it is the cornerstone of the legislation and defines its underlying philosophy.

The concept of “sustainable management” is somewhat unique to NZ. It differs from the concept of “sustainable development” frequently referred to in international contexts, in that sustainable management focuses on the biophysical aspects of the environment. In contrast, “sustainable development” places equal emphasis on social and economic aspects. Social and economic considerations play some role in decision making under the RMA, through their inclusion in the definition of the word “environment”, but this is quite limited. In particular social and economic planning are not part of sustainable management.

The diagram below puts the RMA concept of sustainable management in the wider context of sustainable development. While there is a small overlap with the economic and social spheres, the emphasis is on natural and physical resources - air, water, soil, land, structures and ecosystems.



The intent of the act is to provide a framework within which people and communities can achieve their aspirations. This intent is limited only to the extent necessary to prevent environmental damage and to protect resources for the future. However, in using natural and physical resources, it is incumbent upon everyone to consider and limit the adverse effects their activities may have.

The opportunities for private action and benefit from using the natural and physical environment, found in section 5 of the Act, are also counter balanced by an emphasis on some “public” aspects of the environment. Thus section 6 sets out several matters of national importance. These are priority matters, which decision makers must recognise and provide for. These include:

- preservation of natural character in coastal areas, and along rivers and lakes
- protection of outstanding natural features and landscapes
- protection of areas of significant indigenous habitat values
- protecting and improving public access to the coast, lakes and rivers
- recognising traditional maori relationships with natural resources.

Thus change and development in certain areas must be particularly carefully evaluated to ensure that the matters of national importance are given proper weight.

As well as these considerations section 7 includes a list of other matters to which particular regard must be had. This list is

wide-ranging and includes complex concepts such as amenity values, stewardship, kaitiakitanga, heritage and intrinsic values, as well as efficient use considerations and any finite characteristics of resources. There is now substantial case law from the Environment Court relating to each of these aspects; and how they might apply in each situation must be carefully considered.

These “Part II” matters apply in the preparation of policies and plans, as well as in making decision on individual appreciations.

***TREATY OF
WAITANGI***

The Treaty is a partnership between Maori and the Crown. However under the RMA, the Crown has delegated significant powers and functions to local authorities. Accordingly, local authorities and tangata whenua of the local area (iwi) can be considered as Treaty Partners in terms of the RMA.

Section 8

The RMA requires that in achieving the purpose of the Act (ie. sustainable management of resources) all persons exercising functions and powers under the RMA shall take into account the Treaty of Waitangi. By virtue of section 8 of the RMA councillors and community board members must take into account the principles of the Treaty of Waitangi in their resource management decision making.

As yet, unfortunately, there is no authoritative or definitive interpretation of what are the principles of the Treaty. However, case law and in particular case law under the RMA has identified key “cornerstones”.

- responsibility of treaty partners to act fairly and in good faith
- responsibility of reasonable co-operation
- obligation to consult in a genuine and open minded manner that enables informed decision making.

The Environment Court has confirmed that for the purposes of

section 8 of the RMA consultation is one of the principles of the Treaty of Waitangi.

FUNCTIONS AND POWERS

Central Government

The two Ministers of the Crown that have directly authorised functions and powers under the RMA are the Minister for the Environment and the Minister of Conservation. In administering these duties they are assisted and advised by their respective Ministries.

Minister for the Environment

The role of the Minister for the Environment, and Ministry, is one of overview of performance and monitoring of the implementation of the RMA.

Sections 24, 25, 26, 27

Key functions of the Minister are:

• the setting of national environmental standards by regulation	Section 43
• recommending the issuing of national policy statements and water conservation orders	Section 52, 214
• “call in” of resource consents of national significance for decision by central government	Section 140
• approval of requiring authorities and heritage protection authorities	
• monitoring the relationship between central government and local government in terms of their functions under the RMA.	Section 25

The Minister can also appoint people to carry out the functions, powers and duties of local authorities where they are not performing their roles adequately.

The Ministry produces a wide range of publications to assist

Relevant RMA Provisions

councils and the public understanding and implementing the RMA. It also makes submissions and appears at some Council hearings as a representative of the Minister, if matters of national interest are at stake, or as an advisor on practice.

Minister of Conservation

The Minister of Conservation assisted by the Department of Conservation has the responsibility for the overall management of the coast by way of the following functions.

Sections 28, 28A

• preparation of the New Zealand Coastal Policy Statement	Section 57
• approval of regional coastal plans	
• deciding on applications for coastal permits for restricted coastal activities	Section 119
• monitoring the New Zealand Coastal Policy Statement and coastal permits granted by the Minister.	

The Department of Conservation plays an active role in coastal, heritage and conservation issues, makes submissions and appears at hearings to ensure that these matters are adequately considered in the RMA context.

Local Government

Regional Councils

Regional councils have a key role under the RMA in developing regional policy statements and regional plans to ensure the integrated and sustainable management of a region's resources. They are primarily responsible for the management of:

Section 30

• water;
• air quality;
• soil;
• beds of lakes and rivers;
• geothermal resources; and

Relevant RMA Provisions

- pollution control.

In terms of land use, regional councils' responsibilities are limited to:

- natural hazard mitigation
- soil conservation
- maintenance of water quality
- mitigation of the adverse effects of hazardous substances and
- distance of beds of rivers and lakes

Along with the Minister of Conservation, regional councils have joint responsibility for the management of the coast and the coastal marine area.

Regional councils must prepare the following planning documents.

First Schedule Part I

- Regional policy statements which set out the objectives and policies for the integrated management of the resources of the region.
- Regional coastal plans which set out the objectives, policies and rules for the management of the coastal marine environment.

Regional councils have the option of preparing other regional plans such as air plans and water resources plans, or may administer these responsibilities directly under the Act.

In respect of resource consents, regional councils are responsible for processing applications for:

- coastal permits - eg to reclaim, occupy, disturb, erect a structure, discharge a contaminant in the coastal marine area
- water permits - eg. to take, use, dam or divert water

<ul style="list-style-type: none"> • discharge permits - eg. to discharge contaminants to land, air, water.
<ul style="list-style-type: none"> • disturbance of beds of rivers and lakes
<ul style="list-style-type: none"> • land disturbance activities which may be of regional significance

Territorial Authority (District and City Councils)

Territorial authorities' key function under the RMA relate to land use management. This includes:

Section 31

<ul style="list-style-type: none"> • the preparation of district plans to manage the effects of the use, development or protection of land and associated resources of the district, control of subdivision and noise, and control of effects of activities on the surface of water
<ul style="list-style-type: none"> • processing resource consent applications for land use and subdivision.

Unitary Authorities

Unitary authorities combine the functions of both regional councils and territorial authorities. There are currently four unitary authorities - Gisborne District, Marlborough District, Nelson City and Tasman District.

Overlap of Responsibilities

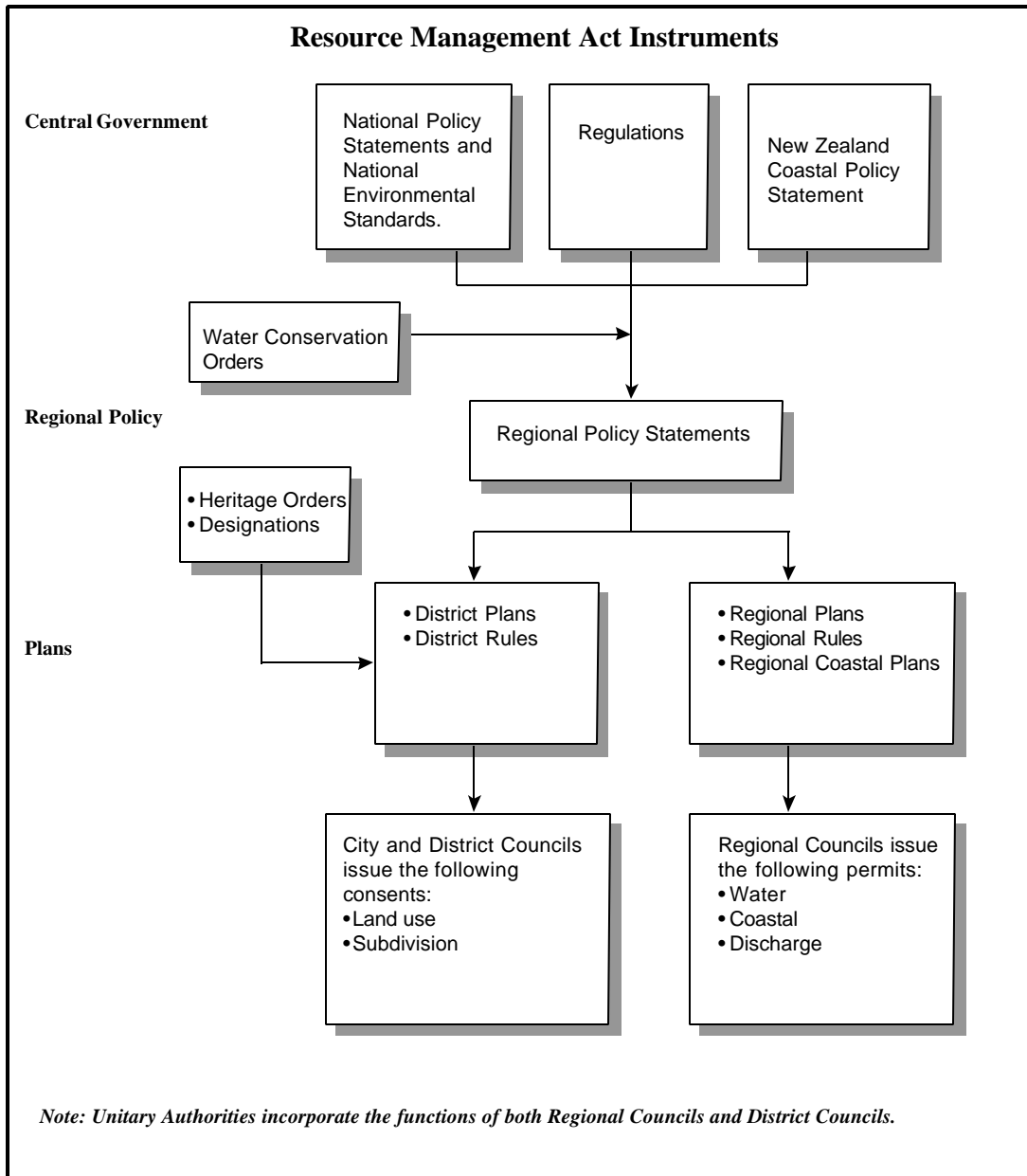
There are certain overlaps between the responsibilities of regional councils and territorial authorities. Examples of this occur in the management of natural hazards such as land instability, inundation and flooding, and of hazardous substances. Who takes responsibility for such functions must be resolved between regions and district, in order to provide certainty for resource users and the general public. The regional policy statement may define these responsibilities.

PLANNING DOCUMENTS

**Relevant RMA
Provisions**

The principal means of implementing the purpose and requirements of the RMA is through a hierarchy of planning documents (ie. policy statements and plans). These documents set out the policies and methods for the integrated management of the resources of regions, districts and cities and should address the effects of activities on the environment rather than the arbitrary regulation of activities.

Given the importance of policy statements and plans it is essential that local government politicians are actively involved in the preparation and implementation of these documents.



Regional Policy Statements

Regional policy statements are mandatory documents prepared by regional councils. Their purpose is to provide an overview of the resource management issues of the region and to set out the policies and means for achieving the integrated management of the resources of the whole region. Sections 59, 60, 61, 62

Policy statements are not prescriptive. Rather they establish broad objectives and policies to be achieved in the promotion of the sustainable management of a region's natural and physical resources.

All regional and district plans must be consistent with regional policy statements.

Regional Plans

Regional plans except for regional coastal plans, are optional. These plans are prepared to assist regional councils in carrying out their functions under the RMA and can be used to set parameters for the use of such public resources as water, beds of lakes and rivers, air and the coastal environment.

Sections 63, 64,
65, 66, 67, 68,
69, 70

Each region is responsible for the preparation of its own plans, as such rules which apply to the management of resources may vary from region to region. There is considerable flexibility in the circumstances in which a region may choose to prepare a plan, add in the contents of regional plans.

Regional plans focus on special regional resources or issues and contain detailed policies and associated rules. The main types of plans prepared by regional councils are:

Regional Coastal Plans

All regional councils must prepare a regional coastal plan. These plans control, for the coastal marine area:

<ul style="list-style-type: none">• occupation, disturbance, damage of foreshore or seabed
<ul style="list-style-type: none">• extraction of sand, shingle etc.
<ul style="list-style-type: none">• taking, use, damming and diversion of water
<ul style="list-style-type: none">• discharge of contaminants
<ul style="list-style-type: none">• introduction of plants
<ul style="list-style-type: none">• surface water activities

Regional Water Plans

These plans provide a use and management strategy for a region's water resources and for the beds of lakes and rivers. They control:

<ul style="list-style-type: none">• the taking, use, damming and diversion of water• the quantity level and flow of water• discharge of contaminants and water quality• use and development of river and lake beds

They may apply to specific water places, or over the whole region.

Regional Air Plans

Regional air plans set out a framework for the management of environmental effects of discharges into air.

Regional Land Management Plans

The preparation of regional land management plans is optional. These plans may manage the use of land in respect of:

- | |
|---|
| <ul style="list-style-type: none">• soil conservation• natural hazards• storage, use, disposal or transportation of hazardous substances• discharge of contaminants• maintenance and enhancement of the quantity and quality of water |
|---|

Other Regional Plans

Depending on the region, there may be special purpose plans such as waste management plans, or plans relating to a specific river or lake. Regions are now tending to try to consolidate their plans, to better address their primary function of integrated management.

District Plans

District plans are mandatory and are designed to assist district and city councils in carrying out their functions under the Act. District plans are concerned with the use, development and protection of land and associated resources. They seek to control:

Sections 72, 73, 74, 75, 76, 77

- | |
|--|
| <ul style="list-style-type: none">• actual or potential effects of any use of land including avoidance and mitigation of natural hazards and the adverse effects of hazardous substances |
| <ul style="list-style-type: none">• subdivision of land |
| <ul style="list-style-type: none">• emission of noise |
| <ul style="list-style-type: none">• effects of activities on the surface of water in rivers and lakes |
| <ul style="list-style-type: none">• effects on the community, resources, cultural and |

heritage sites, and the landscape
<ul style="list-style-type: none"> • circumstances when a financial contribution may be imposed
<ul style="list-style-type: none"> • locations or circumstances where esplanade reserves or strips will be required
<ul style="list-style-type: none"> • the scale, sequence, timing and relative priority of public works, goods and services, including public utility networks.

District plans generally comprise three parts:

- (i) **Issues, Objectives and Policies** - this section identifies the major resource management issues for the district, and the environmental outcomes that a council seeks to achieve. The objectives and policies set out the direction a council intends to take in respect of the identified issues and outcomes. They assist the Council in making decisions on resource consent applications, and set out methods other than rules that the council intends to use to address the resource management issues that have been identified.
- (ii) **Rules** - in many cases the method used in a district plan to achieve objectives and policies will be the setting of rules to control land use. Rules include defining the status of activities and the imposition of standards and conditions to control the effects of activities. Each rule has the force and effect of a regulation under the RMA.
- (iii) **Planning Maps** - the maps form an important part of a district plan. They illustrate where particular policies or rules apply. They help to describe a district graphically, interpret objectives and policies and show specific requirements of sites.

Activities

Regional and district plans can include rules which regulate or allow activities in order to avoid, mitigate or remedy effects. These rules can define the status of particular activities or activity groups depending on their actual or potential effects.

Plans generally identify five categories of activities. They are as follows:

- **Permitted Activity** means an activity that is allowed by a plan without a resource consent if it complies in all respects Section 2

with any conditions specified in the plan.

- **Controlled Activity** means an activity which is expressly provided for by a rule in a plan, complies with the standards and terms specified in a plan and is only allowed if a resource consent is obtained. It should be noted that councils cannot refuse to grant consent for controlled activities. However, they can impose consent conditions on aspects that have been set out in the plan. Section 2
- **Discretionary Activity** means an activity which is provided for by a rule in a plan, is allowed only if a resource consent is obtained and which may have standards and terms specified. A council can consent or refuse applications for discretionary activities and may attach conditions to a consent. Section 2
- **Non-complying Activity** means an activity which contravenes a rule in a plan and is allowed only if a resource consent is obtained. A council can consent or refuse applications for non-complying activities, depending on strict tests in the RMA. Section 2
- **Prohibited Activity** means an activity which a plan expressly prohibits and describes as an activity for which no resource consent shall be granted.

Comment

Most councils throughout New Zealand are in the process of introducing new district or regional plans - the first for the area prepared under the RMA. Once a new plan (proposed plan) has been publicly notified it becomes a statutory document and each rule has the force of a regulation under the RMA. All proposed activities and works must comply with the provisions of a new plan. Where they do not, a resource consent must be obtained.

Transitional Plans

Existing district plans which have been prepared under the Town and Country Planning Act² are known as transitional plans. Similarly, there are transitional regional plans which collect together a range of statutory controls which were developed under earlier legislation (eg permits for dairy shed effluent treatment and discharges, air quality regulations).

The provisions of these plans will continue to apply to activities

² The Town and Country Planning Act 1977 was one of the Acts replaced by the RMA.

until a new plan (proposed plan) becomes operative. Accordingly, proposed activities must comply with transitional plans until all relevant submissions and appeals on a new plan have been disposed of.

Duty to Consider Alternatives

Section 32 of the RMA requires that before a council includes a provision in a policy statement, regional plan or district plan, it must be satisfied that the provision is necessary for achieving the purpose of the RMA and is the most appropriate means of exercising the council's functions. The two principal aspects of this section are that a council must be satisfied that any provision is:

- necessary in achieving the purpose of the Act; and
- the most appropriate means of exercising its functions, having regard to efficiency and effectiveness relative to other means.

In brief, this means that a council must be justified in including a provision in a policy statement or plan. This justification must relate to the knowledge that there will be adverse effects in the environment if actions are not managed, and that the particular provision is the most appropriate means of addressing the likely adverse effects.

It would be fair to say that section 32 of the RMA is a check to ensure that a council does not introduce restrictions and limitations through a plan to address problems that either do not exist, or that would be more appropriately dealt with in other ways.

The obligation to consider alternatives not only applies to councils in terms of regional policy statements and regional and district plans but also to central government in respect of national policy statements and national environmental standards.

The requirements of section 32 must be given careful consideration by all those involved in the preparation of policy statements and plans. Councillors have the ultimate responsibility of ensuring that any proposed provisions are the most appropriate means of exercising the council's functions, and that there are not other more suitable alternatives.

Resource Consents

A key function for councillors and community board members is making decisions on applications for resource consents.

Resource consents are needed where a plan specifies that a

Relevant RMA Provisions

Section 32

Types of Consents

consent must be obtained for an activity, and where an activity cannot meet the conditions, standards and terms set out in the plan.

In the absence of plans and in the transitional period while new plans are in preparation under the RMA, consents may also be directly required under Part III of the Act.

The RMA provides for the following types of resource consent:

Land Use Consent

A land use consent is a consent to use land in a manner that contravenes a rule in a regional or district plan.

Land includes the surface of water in a lake or river, and the bed of any lake or river.

Land use consents can be issued by both regional and district councils.

Subdivision Consent

A subdivision consent is a consent to the division of an allotment. A subdivision includes:- unit titles, cross leases, company leases and any other leases apply for 20 years or longer. Subdivision consents can only be issued by district/city councils. Amalgamation of allotments also technically require subdivision consents, unless a rule in a plan permits them.

Coastal Permit

A coastal permit is a consent to undertake activities in the coastal marine area and includes the erection of structures, occupation of land, removal of materials, occupation and use of coastal water and discharge of contaminants. Coastal permits can only be issued by regional councils.

Water Permit

A water permit is a consent to take, use, dam or divert water or heat or extract energy from water. Water permits can only be issued by regional councils.

Relevant RMA Provisions

Section 87

Section 9, 13

Section 11, Part X

Section 12, 14, 15

Section 14

**Relevant RMA
Provisions**

Discharge Permit

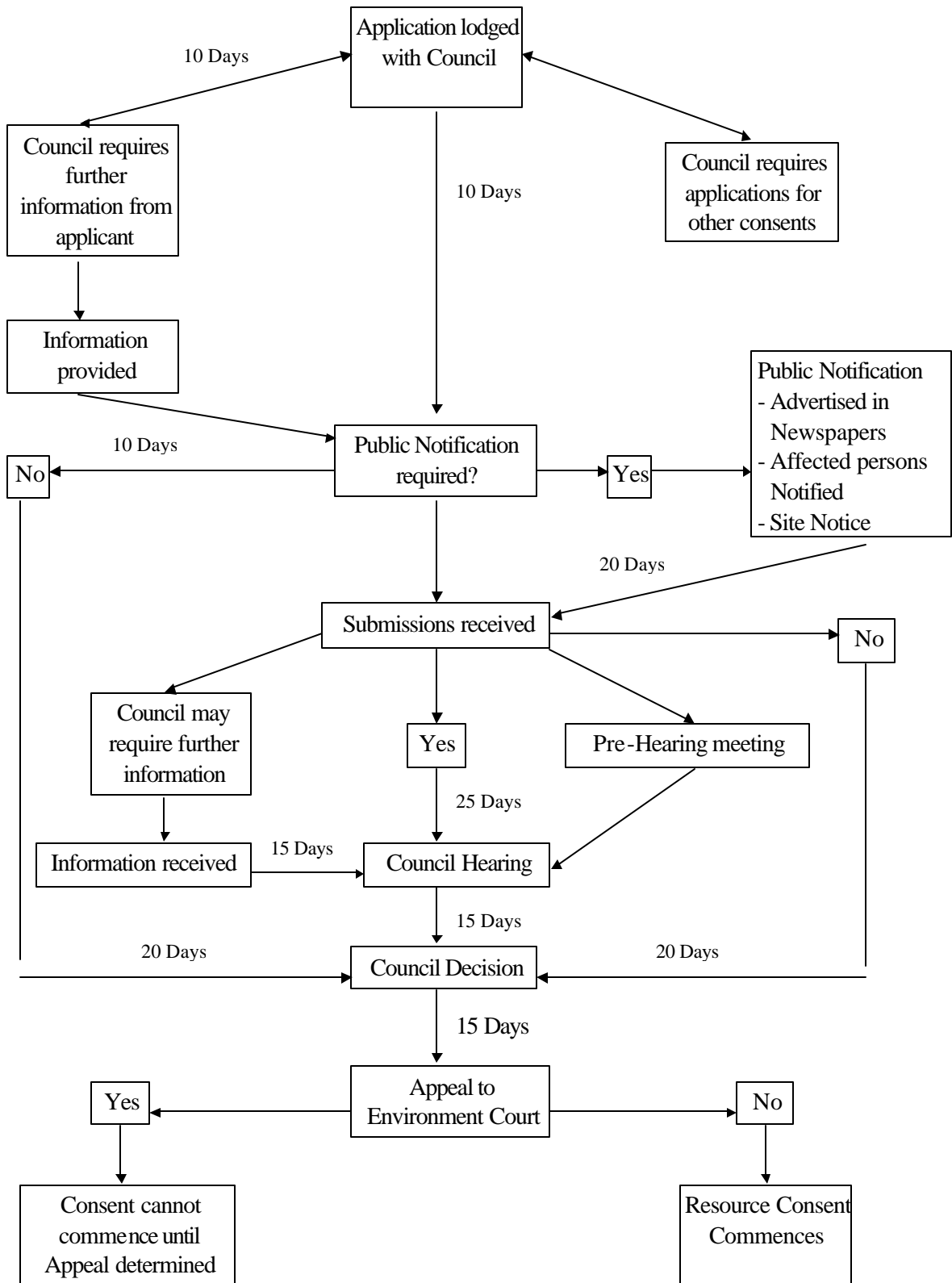
A discharge permit is a consent to discharge contaminants into the environment including:

- contaminants of water into water
- contaminants onto land
- contaminants into air

Section 15

Figure 2

RESOURCE CONSENTS PROCEDURE



Applications

The procedures to be followed in applying for resource consents are set out in the RMA. Plans also specify what information and material must be provided to satisfy the council's requirements before an application is accepted. Council officers decide whether applications contain sufficient information for processing.

All applications must include an assessment of the effects the proposed activity may have on the environment. The matters which should be addressed in such an assessment are set out in the RMA.

The amount of detailed information that needs to be provided in an application depends in the type of resource consent and corresponds with the scale and significance of the effects the activity may have on the environment.

Councils are able to request further information relating to an application to enable better understanding of the nature of a proposal.

The RMA sets out strict time frames which councils must comply with in the processing of applications. Figure 2 sets out the process and time frames involved.

Applications for resource consents should be in the prescribed form set out in the RMA. Applications should include:

- 1) A description of the activity for which consent is sought and its location,
- 2) An assessment of any effects the activity may have on the environment and the ways in which any adverse effects may be mitigated,
- 3) Information on affected persons and consultation undertaken,
- 4) Any information required to be included in the application by plans or regulations, and
- 5) A statement specifying any of the resource consents required and whether they have been applied for.

Relevant RMA Provisions

Part VI

Fourth Schedule

Section 92

Form 5
Section 88

Applications should identify those persons interested in or affected by a proposal, the consultation undertaken and any response to the views of those consulted. The level and extent of consultation depends on the impact an activity will have. In general, the greater the effects, the more extensive and comprehensive the consultation.

Affected or interested parties may include neighbours, tangata whenua, residents groups, environmental groups, and others. Trade competitors are not interested parties.

***Notification or
Non-
Notification***

Councils have the discretion to decide whether an application requires public notification or whether it can be treated as non notified. Council officers are usually given the delegated responsibility to make such decisions.

Public notification means that an application is advertised in the public notices section of the local paper, a notice is put up on the site concerned, affected persons are sent a copy of the notice, and submission are called for.

Section 93

There is a general presumption that all applications will be notified but the RMA sets out circumstances where applications need not be notified. It is not necessary for controlled activities to be notified provided the consent of affected parties is obtained. With discretionary and non-complying activities a Council can decide not to notify an application if it is satisfied that:

- 1) The adverse effect of the activity on the environment will be minor; and
- 2) Written approval has been obtained from every person who may be adversely affected

Council officers decide which persons and organisation may be affected by a proposal and from whom written approval must be obtained. In practice, over 90% of applications nationwide, are non-notified.

HEARINGS

Participation in hearings is probably the most important function undertaken by Councillors and community board members in the

Delegation

exercising of powers under the RMA. For the main part Councillors are involved in hearing and deciding on application for resource consents or submissions on policy statements and plans.

Councils have the power to delegate decision making functions to council committees, community boards, hearings, commissioners (who may be any appropriate person appointed properly under the Act) and staff. This generally occurs in order to ensure more efficient decision making or to avoid conflicts of interest.

Delegation, other than to a council committee, however, does not extend to preparing, approving or changing policy statement or plans. Community Boards and Commissioners can, however, hear these matters and report back to the council. Staff may deal with many matters, other than policy, but may not grant a resource consent for a notified non-complying activity or make recommendations on designations or heritage orders.

Delegation does not remove responsibility and accountability for decisions.

**Powers and
Duties**

Hearings are held in relation to the following:

- A proposed policy statement plan, or change or variation to a policy statement or plan
- An application for resource consent
- An application for a review or a resource consent or change of consent conditions
- A requirement for a designation or heritage order.
- A decision on a non-notified resource consent

Hearings are to be held in public and conducted without unnecessary formality. Applications and any submitters who have stated that they wish to be heard may speak. A Council can limit the hearing of people with the same interest if there is likely to be excessive repetition. Those making submissions may be questioned only by members of the hearing committee, and no cross examination by other parties (applicant, other submitters) is possible.

Applicants and submitters can engage lawyers and expert witnesses (i.e. planners, engineers, landscape architects, scientists) to assist them in presenting their applications and submissions to the hearing committee. Expert witnesses should usually produce written evidence and should specify their qualifications and expertise to the hearing committee. Lawyers act as advocates for applications and submitters, in contrast to the role of an expert witness who can only present his or her expert opinion.

Officer Reports

To assist councillors in hearing and deciding on applications and submissions, council officers or consultants employed by a council should provide written reports on the matters subject to the hearing. The reports should contain recommendations on whether on application should be granted or declined and submissions be allowed or disallowed. If conditional approval is recommended, draft conditions should be set out. A report should also set out the reasons for the recommendation.

Reports should be circulated to applicants and all submitters at least 5 working days before the meeting.

Natural Justice

Hearings provide one of the few opportunities for the public to interact directly with councillors. If hearings operate well the public gain an impression that the council is a fair and effective decision making body. If the opposite impression is gained there is a greater likelihood that the council's decision will be appealed to the Environment Court. Decision making must be fair and transparent.

When conducting hearings a council (in practice normally a committee of council) has a special judicial or quasi judicial role. The provisions of the Commission of Inquiry Act 1908 apply in respect of:

- powers to maintain order
- evidence
- powers to summon witnesses
- service of summons
- protection of witnesses
- allowance for witnesses

In addition to the statutory requirements, the hearing process must adhere to the common law principles of "natural justice".

The expression natural justice relates to a general concept rather than a specific rule, and thus there is no precise definition of the term. The essence of the concept is simply a general notion of procedural fairness. The effect of the requirement is that councils are expected to conduct hearings in a manner which is “inherently fair and just.”

All applicants and submitters have a right to a hearing before unbiased adjudicators. To feel they have been treated fairly, a person will generally expect at the very least:

- 1) that they will be given a fair opportunity to be heard; and,
- 2) that the councillors involved will take an impartial approach to their case

It is also important to ensure that a council not only acts fairly but is clearly seen to be acting fairly. For example, delegating decision making responsibilities to a commissioner where a proposal involves council land, council funding, a particular councillor’s interests and possibly interests of senior staff. Such an action will avoid any perception of possible bias. It is not a question of whether a council is capable of putting aside irrelevant considerations, but is rather a matter of public perception.

For the same reason, it is important that councillors involved in a hearing do not have any private discussions with applicants or submitters before hand, or between a hearing and making a decision, or make any comment to the media.

Any personal or financial interest on the outcome of a hearing must immediately exclude a councillor from taking part. There is no need for councillors to be excluded simply because they know the people involved.

**Duty to Avoid
Unnecessary
Formality**

The RMA specifies that the hearing process shall “avoid unnecessary formality”. A delicate balance has to be achieved to meet this requirement, as hearings do involve formal procedures. However, often those taking part in the hearings have had little or no experience of such procedures and need to be put at ease to enable them to fully contribute.

Some ways of making hearings “user friendly” and effective include:

- The layout of the room should ensure everyone can be seated and can hear what is said. In some hearing rooms there is a danger of the main parties taking up tables at the front and effectively excluding everyone else.
- The chairperson should introduce the hearing panel and council officers present. It is advisable for the councillors and officers to refer to each other and participants in the hearing by surnames even if, for example, a councillor knows one of the submitters well.
- In opening the hearing, the chairperson should briefly explain the procedure that will be used and ask if there are any questions about this. The opportunity can be taken to mention that the Act prevents the parties from questioning each other, and that each party is to be given the opportunity to speak without any comments or interjection from others. “House keeping” matters can be mentioned such as the time the hearing panel intends to take breaks.
- An order of hearing should be arranged at the outset. Some councils hear from their officers first. Any reports from officers or consultants have to be sent to the parties at least five working days before the hearing (section 42A) and participants will often want to refer to these reports, so there is some logic in having them presented at the beginning of a hearing. Other councils prefer to deal with officers’ reports towards the end of hearings so that the officers are able to comment on the evidence presented by the parties. The normal (and logical) order for hearing the parties is to hear from the applicant first, followed by submitters in support, then submitters in opposition. It is normal to give the application a right of reply at the end of each hearing. It is important to ensure that this is limited to a response and is not used as an opportunity to introduce new information. If new information is introduced as part of a right of reply, the submitters should be given an opportunity to comment on it. If a hearing is likely to take some time (some can take several days!) an attempt should be made to allow people to make their presentations at times to fit in with any other commitments.
- Participants in hearings can be asked (in the notice of hearing which must be sent out at least ten working days before a

hearing) to provide copies of submissions and evidence. There is, however, no legal requirement for people to do so, and people must be allowed simply to make oral submissions.

- Members of hearing panels should address all questions through the chairperson and should avoid making comments in the course of asking questions.
- Conditions which could be applied if consent is granted will usually be suggested in officers' reports and sometimes by the parties. If there is the possibility that some other condition might be attached to a consent (for example an idea that one of the hearing committee members has), this should be raised during the hearing and the parties given an opportunity to comment on it.
- Where councillors make a site visit after a hearing, it is important that this does not become an opportunity for the parties to make further comment. The best solution is normally to seek permission from the applicant at the hearing to make a site visit, and to indicate that the hearing committee will make the site visit without any of the parties present. If it is necessary to have the applicant present (for example where there is a need to enter buildings) the opportunity should be given for other parties to be present.

Joint Hearings

The RMA encourages joint hearings where several resource consents in relation to the same proposal have been lodged with different councils (i.e. a district council and a regional council). Councils must jointly hear such applications unless they agree that the applications are sufficiently unrelated and the applicant agrees that a joint hearing is not necessary.

Sections 102,
103

The regional council will act as the co-ordinating agency unless agreed otherwise. Separate discussion can be issued but consent conditions must be consistent.

Joint hearings can save applicants and submitters significant time and money, and are an efficient means of administering the resource consent process.

DECISIONS

Decision making must be lawful, fair and transparent.

Councillors are expected to bring to the process their knowledge and understanding of the community and their ability to weigh evidence and submissions. They must approach the process with an open mind.

Care must be taken to take into account all relevant matters and not to take into account extraneous matters. For example, a district or regional plan must be taken into account whether or not the particular councillors at the hearing agree with the relevant provisions. Similarly, decision makers should not take into account whether an applicant “deserves” a consent or a submission to be allowed because they are a “good person” or that the proposal is a “good/bad idea”.

Councillors should not aim to make “populist” decisions and be swayed by the number of submitters in support or opposition. Each case should be assessed on its merits in terms of the requirement of the RMA and plans.

One of the purposes of public hearings is to ensure that all information made available to the council is known to all interested parties. No additional information, such as reports from council staff, can be received after the hearing. If during the course of a hearing it is evident that further information is required to make a decision, the hearing must be adjourned and any further information obtained and made available to all parties for comment or prior to a reconvened hearing.

**Resource
Consent
Applications**

The RMA sets out the matters that a council must consider when making a decision on a resource consent application

Section 104

In the first instance, the decision is subject to Part II of the RMA. If a proposal is contrary to the purpose and principles of the Act it cannot be granted.

Councils shall have regard to:

- any effects on the environment of allowing the activity; and
- any relevant regulations and policy statements
- any relevant provision of regional or district plans or proposed plans

Relevant RMA Provisions

- Any relevant water conservation orders, designations or heritage orders
- any other matters the council considers relevant

The RMA specifies that councils cannot take account of any effects of an activity on those affected people that have given their written approval for a proposal. Also no account must be given to the effects of trade competition on trade competitors.

Rules relating to the granting of consent for controlled activities, discretionary activities, and non-complying activities are also specified, along with restrictions on the granting of subdivision consents and discharge permits.

Conditions

Conditions may be attached to resource consents to control the effects of an activity or to require a financial contribution, bond, covenant or administrative charge. Consent holders have a responsibility to comply with all conditions imposed. Failure to do so can result in prosecution.

Section 108

Notification of Decisions

All applicants and submitters must be notified in writing of the council's decisions. Such notification should also set out the council's reasons for the decisions.

Section 114
First Schedule
Clause 11

Submitters and applicants have 15 working days to lodge appeals or references with the Environment Court if they are dissatisfied with the decision.

Time Frames

A resource consent commences once the time for appeals has expired. Where appeals have been lodged, the resource consent starts once the Court's decision is made or the appeal is withdrawn.

Land use and subdivision consents are for an unlimited period unless otherwise specified in the consent. The maximum period for any other consent - a coastal permit, water permit or discharge permit, is 35 years. Applications should specify the time period for the duration of a consent, which is being sought.

The RMA states that unless a resource consent is taken up or used within two years of the date of the commencement of the consent, it lapses. Provision is made for requests for extensions and applicants can seek a longer commencement time frame.

Land use and subdivision consents attach to the land and not the applicant. Water, coastal and discharge permits are able to be transferred to another person but not to another site.

CONSULTATION

Consultation under the RMA comprises:

- consultation by the crown, regional councils and territorial authorities in respect of the preparation of policy statements and plans
- consultation by consent authorities (regional councils and territorial authorities) in respect of resource consent applications
- consultation by applicants in respect of resource consent applications.

While the RMA includes provisions requiring that consultation be carried out, it does not prescribe how consultation should be undertaken or what outcomes are to be achieved. Current case law provides the best guide to what is consultation and how it should be undertaken. Key elements of consultation include:

- ensure all affected or interested persons are given the opportunity to be part of the consultation process
- ensure all persons involved have sufficient understanding of what is proposed to enable informed and useful response
- provide sufficient opportunity and time for persons being consulted to suit their view
- ensure that consultation is undertaken in a genuine and open minded manner
- provide feedback to how views and opinions obtained through the consultation process have been treated.

Consultation does not mean negotiation or agreement or acceptance of the views of the parties being consulted.

Tangata Whenua

The duty to consult with tangata whenua arise from 100 main

Sections 6e, 7a,

sources in the RMA. These are:

- expressed or implied obligations imposed by particular provision of the RMA; and
- consultation as a recognised principle of the Treaty of Waitangi.

Consultation with tangata whenua is a means of ensuring that decision makers act consistently with the principles of the Treaty and are able to make informed decisions.

Consultation with tangata whenua must be undertaken by councils in the preparation of policy statements and plans. Applicants for resource consent are not required to consult with tangata whenua. However, the Environment has stated that it is recognised good practice.

TO CONCLUDE

The role of a decision maker under the RMA is a very important one. Councillors and community board members who undertake this role have a responsibility to ensure that all decisions are made in a consistent, informed, fair and transparent manner. In doing so, this will achieve better environmental outcomes for the benefit of your districts, cities, regions and New Zealand as a whole.

“Good Luck”