

# The Resource Management Act



**Burns Fraser**  
ENVIRONMENTAL LAW PARTNERSHIPS

# Introduction

- Overview of plan making process
- Overview of resource consent process
- Relationship with Council
- Notification
- Challenging notification decisions
- Lodging an appeal
- Becoming party to an appeal
- Seeking a declaration
- Seeking an enforcement order
- Engaging experts

# Plan Making Process

- First Schedule- applies to new plans and changes
- Consultation-DoC, MfE, Iwi
- Publicly notify for submissions-40 working days
- Copies in public libraries
- Anyone can submit
- Can submit on what's in or out (Kaipra case)
- Council publicly notifies summary of submissions
- Further submissions

# Plan Making Process

- Hearing-Councillors, Commissioners or combination
- Decision with reasons
- Publicly notify decision
- Appeals

# Resource consent process

- Sections 88-120
- Application needed under plan
- Must include AEE
- Council has 5 days to accept or reject
- Time limits for Council processing
- Council may request further information

# Resource consent process

- Council decides whether or not to notify
- If not notified, no submissions, no hearing or appeal rights
- If notified submissions , hearing and appeal rights
- Council may direct pre-hearing meetings/mediation
- Council officers report
- Hearing by Councilors or Commissioners
- May employ lawyer and call witnesses
- Decision with reasons
- Right of appeal

# Relationship with Council

- Importance of constructive relationship
- Get to know Council officers
- Approach at right level
- Courtesy
- Recognise officer pressures and priorities
- LGOIMA can be useful
- Awareness of politics and media

# Notification

- Sections 95-95G
- Importance of Council notification decision
- Section 95A(2) must notify in some circumstances
- Section 95A(4) Special circumstances
- Section 95(B) Limited notification
- Section 95(D) Council decides if adverse effects likely to be more than minor
- Section 95(E) Council decides affected persons



# Challenging notification decisions

- High Court judicial review-no Environment Court jurisdiction
- High Court concerned mainly with process not merits
- Importance of acting promptly
- Opposition from both consent holder and Council
- Risk of costs-High Court schedule
- Security for costs
- Difficult succeed
- Best to try and get Council to notify

# Lodging an appeal

- Resource consents: sections 120 and 121
- Plans: First Schedule clause 14
- Resource consents: applicant or submitter may appeal
- Plans: any submitter may appeal
- Resource consents: submitter may appeal against whole decision or conditions
- Plans: only on points submitter referred to in submission
- Cannot seek withdrawal of whole plan
- Filing fee payable
- Form of appeal set out in regulations
- Wise to take legal advice before lodging appeal
- Importance of relief sought-defines what Court can do

# Becoming party to an appeal

- Section 274
- Submitter or person with interest greater than the general public may become party
- Party may support or oppose relief sought on appeal
- Notice within 15 working days after appeal period ends
- Form in regulations
- Notice must say whether support or oppose with reasons
- Entitled to appear and call evidence at hearing
- But can only do so within scope of relief sought in appeal
- No filing fee
- But may be liable for costs

# Seeking a declaration

- Sections 310 and 311
- Wide Environment Court jurisdiction
- Interpretation of Act or Plan provisions
- Existence of a function, duty or power
- Filing fee
- Application supported by affidavits
- Usually just legal argument
- Only if practical result- no hypotheticals
- Successful example: EDS Kaipra Plan declaration

# Seeking an enforcement order

- Section 314-321
- Anyone can apply
- Can require someone to take action or cease action
- Non-compliance with rule in plan condition of resource consent
- Best to get Council to apply if possible
- Filing fee and risk of costs

# Engaging experts

- RMA cases usually raise technical issues
- Identify key technical issues
- Limited resources-employ experts on key issues only
- Best to get expert advice before Council hearing, if possible
- Experts may include: legal and planning advice
- Many technical areas: landscape, water quality, air quality, amenity,traffic,noise
- Ask around for suitable expert
- RMLA website has list of experts
- Costs of experts-possible ELA funding