



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*

# Auditing Assessments of Environmental Effects

## A Good Practice Guide

ENCOURAGING  
Excellence  
in RMA practice

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## Auditing Assessments of Environmental Effects (AEEs)

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ISBN 0 478 09056 0

Published by the Ministry for the Environment

PO Box 10362

Wellington

New Zealand

March 1999



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## Introduction

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An AEE is required by the Resource Management Act 1991 (RMA) to accompany an application for resource consent.

If a council requires a resource consent for an activity, it is because it anticipates the activity may have some effects needing to be controlled. If the activity's potential effects are known in advance, it can be modified and/or conditions attached to the resource consent to ensure such effects are avoided, remedied or mitigated and that good environmental results are achieved. Alternatively, if the significant effects cannot be avoided, remedied or mitigated, the council can make informed decisions on whether to grant the resource consent.

An AEE is a **process** of consciously and systematically identifying the effects of a proposed activity. If the effects are adverse, the AEE should identify ways of addressing them and should therefore ensure that the proposal leads to good environmental outcomes.

This guide focuses on regional and district council AEE audit practices, with the aim of helping new planning staff and others involved in the resource consent process (for example, engineers, arborists and iwi liaison officers). It also contains reminders for experienced staff to assist them in establishing and reviewing procedures, and includes examples of case law and good practice.

Sections 1.0 and 2.0 discuss councils' AEE audit functions and what they seek to achieve. Sections 3.0 to 6.0 discuss elements of good practice in the audit process, from the pre-application to the decision-making phases of a resource consent. Finally, section 7.0 offers suggestions on how to feed back into the community lessons learned during the audit process.



## What is the council's audit function



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## 1.0 What is the council's audit function?

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The council's role is to audit the assessment of environmental effects (AEE).

An AEE is required to accompany any application for resource consent. It is your job to receive and assess the application, including the AEE. The process should identify areas where there are differences of opinion or where there are deficiencies. It should not duplicate the material in the AEE or in the application as a whole, nor should it prepare material that has not been provided.

It is the applicant's role to apply for a resource consent and to meet the requirements of sections 88 and 92, and the Fourth Schedule of the RMA. While you can commission reports, these should relate to the AEE audit, not “fill in the gaps” of the application.

### **The audit function is directly related to decision-making.**

For all activities the audit function relates to whether enough information has been supplied.

For **controlled activities**, it relates to the need to impose conditions according to the matters over which the council has retained control.

For **limited discretionary activities**, it relates to whether to grant consent and whether conditions should be imposed relating to matters over which the council has retained its discretion.

For **discretionary activities**, it relates to whether to grant or refuse consent and to whether there is any need to impose conditions on any consent granted.

For **non-complying activities** it relates to the “test” in section 105 (2)(a), which requires that the consent authority must be satisfied that the adverse effects on the environment (other than any effect to which section 104(6) applies) will be minor. If this test cannot be satisfied, the application may not be consistent with the plan's objectives and policies. If one test is met, the function extends to whether consent is granted, subject to conditions or otherwise.

### **An audit identifies areas of deficiencies or differences of opinion.**

The audit process includes providing a report to the decision-maker, accepting or rejecting the material in the AEE.

This report should comment only on those parts of the AEE where opinion may differ. It should not repeat to any significant degree the site description, the application details, the proposal or the analysis of effects that are agreed. However, if the AEE is very technical or lengthy, a brief summary of facts may be useful. Any outstanding issues should then become - and remain - the focus of the audit.

The audit should also identify any absent important information and you should require that it is provided (pursuant to section 92 of the RMA). Ask yourself such questions as:

- are all effects considered relevant addressed?
- are the techniques used to assess the effects appropriately identified?
- is the assessment accurate?

The key document in the resource consent process is the application, including the AEE. The council's report should only be a record of the audit (although if the AEE is sizeable it may be prudent for the report to summarise the key environmental effects).

### **The audit process has other roles and functions.**

The audit process should include feedback to the AEE preparers. This feedback can be site or application specific, or more generalised if the lessons learned are more widely applicable.

The process should also lead to relevant plan provisions being reviewed where necessary. The issues and information requirements in the plan will of course affect the quality of the AEE. If important issues are omitted from the plan, applicants who consult it may not fully consider all the effects of their proposal. Feedback into the plan can help to:

- identify whether activities or structures requiring resource consent are appropriately included in the plan
- ensure that your region's or your district's significant resource management issues are correctly identified
- ensure that the ways of addressing resource management issues are appropriate and practical
- ensure that the consent categories and performance standards are appropriate, especially in considering cumulative effects
- identify the basic information requirements for an application.



What does the audit process seek to achieve?



## 2.0 What does the audit process seek to achieve?

*The audit process seeks to achieve the timely, cost-effective delivery of advice to decision-makers so that their decisions promote the sustainable management of natural and physical resources.*

**Efficient and effective processing is a key tenet of the RMA. With the ability to impose user charges comes the requirement to process applications efficiently and to charge for that processing responsibly.**

### **Efficient processing.**

Under the RMA, councils have an obligation to process applications within certain timeframes. Compliance with these timeframes relies on the councils' ability and willingness to process consents as quickly as possible. There are no penalties for not complying. However, an applicant cannot proceed with their activity until a resource consent is granted. Non-compliance with the timeframes can, therefore, add significant costs to the overall proposal and can, in some cases, cause it to be abandoned (for example, where the purchase or lease of land is subject to resource consent being obtained within a specified time).

Section 37 of the RMA can be used to extend statutory timeframes by up to double the maximum period or, if the applicant agrees, for as long as the council sees fit. Before making a decision to do this you must consider<sup>1</sup>:

- the interests of anyone who may be directly affected by the extension
- the interests of the community in achieving adequate assessments of the effects of any proposal
- your duty under section 21 to avoid unreasonable delay.

You must also notify every person directly affected by the extension of the reason for its decision, and of the new time limit within which any action must be completed<sup>2</sup>.

### **Responsible charging.**

With “user pays” came a sharp increase in the amounts charged for resource consent processing. This is not necessarily because the RMA increased the processing cost, but rather reflects the facts that:

- a more rigorous standard of application is required
- councils can now commission independent reports on an application
- the community is no longer expected to subsidise consent processing.

<sup>1</sup> Refer to section 37(4) of the RMA.

<sup>2</sup> Refer to section 37(6) of the RMA.

The Ministry for the Environment has produced *A Guideline to Administrative Charging Under Section 36 of the Resource Management Act*<sup>3</sup>. The guide suggests a number of principles for administrative charging which relate to councils' broad charging regime. It also identifies practices that can be promoted as good charging practice in auditing resource consents.

#### **Good practice guidance for avoiding time delays**

- Attach a processing sheet to all applications for resource consent. The sheet can be used to record the completion dates of key steps.
- Make one person responsible for ensuring timeframes are met for a particular application.
- Only receive applications that meet the required standard.
- Start the clock when the application has been received for processing (ie, when it is accepted over the counter). If a consent application is received through the mail, put it through the same rigorous checking procedure as an application taken over the counter.
- Request further information within 10 days of receiving the application. While this is not a statutory requirement, you are required to notify a consent within 10 working days of its receipt. This will require the application to have been initially assessed within this timeframe.
- While initial audits by specialists can legitimately be counted as "further information", avoid penalising an applicant for needing to obtain external auditing advice on routine matters. For example, tree and traffic assessments, for which the plan provides specific guidance, should be completed relatively quickly.
- If, as a result of an initial audit by specialist advisers, they need further information to conduct an appropriate audit, request it from the applicant at the same time as any other request for further information. Avoid subsequently commissioning specialist reports without first advising the applicant.
- Consider administrative functions such as notifying applications and decisions when assessing when each stage of processing should be complete.
- Set clear guidelines as to when section 37 may be used and, before using it, consider the effect of a time extension on both the applicant and any submitters.
- A lack of resources or skills should not be the cause of delays.
- Avoid using multiple requests for further information as an excuse for extending time limits. In other words, and if at all possible, a section 92 request should be made once only<sup>4</sup>.

<sup>3</sup> November 1994.

<sup>4</sup> However, further information received may identify areas requiring further clarification or information.

- Advise the applicant (and any submitters) as early as possible if section 37 is to be used. Either include them in the decision to extend the timeframes or, at the very least, advise them in writing of the reason for the extension and how long it is likely to be.
- If there are no relevant timeframes for certain stages of the process, define what is reasonable in the circumstances for the applicant and any affected parties or submitters. Record in writing why a decision has been made to extend the processing time and the timeframes aimed for.

#### **Good practice guidance for charging for auditing resource consents**

- Advice and information can be critical to preparing and processing an application. Offering free initial advice could save substantial time later.
- Some councils charge “post-application” for advice that can be linked to a specific application. In this case, advise the applicant at the time they seek advice - tell them what is to be charged for and why.
- Have a clear charging policy for advice and information. Consider the public and private benefits of information and charge accordingly. There is a definite public benefit if a resource consent application is properly prepared.
- Discuss the need for specialist reports with the applicant, as they are responsible for providing information. Where further information is required, ensure you consult the applicant and obtain their agreement before seeking (and charging them for) specialist reports. Discuss the brief to the specialist with the applicant before it is sent out, so they have the option of supplying the information themselves, or are quite clear about what they are expected to pay for.
- Allocate an application according to its complexity and the skills and experience of staff. While mentoring and discussion should be encouraged, applicants should not be disadvantaged by delays caused by a processing officer's lack of skills or experience. Where significant mentoring or instruction is required, consider allocating this time to the “public” account.
- Avoid imposing a standard surcharge for handling specialist reports. Do impose a standard surcharge for incorporating them into the overall audit.
- Be realistic about the amount of “chargeable” hours staff are expected to record and the hourly rate.
- Delegate the ability to make decisions to the most appropriate person.





## Pre-application



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## 3.0 Pre-application

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### **The quality of the audit process depends on the quality of the AEE.**

It will be difficult to create an appropriate audit report if the AEE is unsuitable in the first place. It is important to establish clear guidelines on what information needs to accompany an application for resource consent. You should know what makes an acceptable AEE and apply that to the specific information requirements of individual applications.

### **Counter information, specific meetings and the plan's provisions are all important in determining the information that needs to accompany an application.**

Counter information is usually less complex and yet more specific than the plan's information requirements. The requirements in the plan give you a statutory framework for seeking information not specifically required by the RMA (eg, drawn plans, heritage assessments and land management plans).

#### **Step 1 Pre-processing advice and information**

##### **The advice and information an applicant receives before they lodge their application can be critical to a comprehensive AEE.**

You are not obliged to provide advice and information to your customers, but the resource management process generally requires it.

There are distinct advantages in talking to an applicant early about their proposal. This can clearly guide them on whether and what type of resource consent is required, the processes they need to follow and the information the plan requires. It allows them to understand the council's aims and understand the process and the risks. It also allows you to get a feel for the application, to understand the applicant's goals and to anticipate when the application may be coming in.

Establishing the information requirements from the start is the key to receiving a well prepared AEE. Understanding a proposal early and modifying it if necessary can also help in the decision-making process and in setting conditions - thus helping to determine good environmental outcomes. An applicant's knowledge of these matters can make the audit process much simpler.

**There is an important difference between giving advice and giving information.**

*The Concise Oxford Dictionary*<sup>5</sup> defines “advice” and “information” as follows:

**Advice:** (n) words given or offered as an opinion or recommendation about future action or behaviour,

**Information:** (n) something told; knowledge

Advice contains opinion, whereas information is essentially fact. You need to be careful about giving advice because it can be taken out of context and over-the-counter discussions are rarely recorded. If you are inexperienced, offer information and have more experienced staff available at the counter to provide advice. The specifics of any advice should be recorded in writing.

**Advice and information do not have to be limited to specific applications.**

General information can be provided to improve overall practice. It does not need to be specific to an application and can include:

- regular meetings and discussions with key parties or groups (eg, local branches of institutes of planners, architects, engineers or surveyors) about resource management matters, including good practice in preparing AEEs
- newsletters to a target audience (perhaps quarterly), providing feedback and discussion on topical issues
- providing the Ministry for the Environment’s guidelines and pamphlets on preparing AEEs.

Every council will have a slightly different style. However, it is important that the individual process is clear and systematic and that everyone is comfortable with the approach.

**Respect the privacy of people seeking advice and information.**

Discussions at the counter are subject to general information privacy principles. As a general rule, their content should not be disclosed to other people.

#### **Good practice guidance for providing advice and information**

- Encourage early discussion between potential applicants and council staff.
- Give assistance which is accurate, helpful, simple and consistent. “The more information the better” is all very well but greater detail means it is more difficult to cut through to the key issues. Minimise technical jargon.
- Provide clear and straightforward advice booklets for different audiences.
- Explain the resource consent process, including timeframes (and whether the council is meeting these), starting and stopping the clock and charging policies.

<sup>5</sup> *Eighth Edition, 1990, edited by R E Allen.*

- Know the difference between advice and information. Ask questions - encourage the applicant to think about exactly what they want to do and the potential effects of their activity.
- Understand your requirements - be clear about the information requirements and the processing procedure.
- Be aware of information held by other sections of the council, eg, LIM report information, contaminated site files, etc.
- Recognise the functions of other consent authorities and know the circumstances or types of applications in which they are interested. Each should be able to direct applicants to the consents they will, or are likely to, require - including making them aware of other relevant legislation, eg, OSH/ Abrasive Blasting Regulations/Building Act.
- Recognise who is likely to be an "interested person" or "potentially adversely affected party" for certain types of application (including iwi consultants). Know their names and contact details.
- Use the plan to show the applicant the activity's status, the issues of concern and the level of information required by you.
- Where possible, be "rule targeted". At the end of the day most applicants just want consent, so they need to know what rule they are infringing, its purpose and what they need to do to get consent to carry out their proposed activity. On the other hand, remember that compliance with the rules is only one way of promoting the sustainable management of natural and physical resources.
- Know your limitations. A team meeting may be necessary for complex enquiries (see over page). Establish practice guidelines for the "trigger mechanisms" that will alert staff to the need for a specific meeting (or meetings) of relevant people.
- Check that people you are talking to understand what you have said. If you think there may be confusion or misinterpretation, write a summary of your discussions. Consider having pre-prepared checklists for more common applications or for zones with particular requirements. However, remember they are not a substitute for an AEE, so take the time to go through them with applicants.
- Provide proactive (rather than just application-specific) feedback to core parties who rely on your advice and information.
- Respect the privacy of people making enquiries of the council.

## Step 2 Information requirements for applicants

Information requirements should be recorded in the regional or district plan as well as being available over the counter.

While many councils have specific information available at the public counter, there is also a role for clearly stated and comprehensive information requirements to be drafted into the plan.

General information requirements should be expressed as part of the plan.

### General information sections of the plan should:

- contain core information requirements and be located in a separate section
- refer to the broad information requirements required in most applications (such as the basic level of detail required on plans) and to any application forms specifically prepared by your council
- encourage early discussions with you
- highlight the fact that applications should cover all resource consents required
- discuss the need for consultation and its benefit for information collection
- state that the amount of detail in an application should correspond to the scale and significance of the proposed activity's actual and potential effects on the environment, and give some guidance as to what these effects may be
- refer to the Fourth Schedule as a guideline for the required information, and state that full detail is not required in every case
- state the penalties for not providing adequate information (which are that the application will not be accepted or that further information may be required, even commissioned at the applicant's expense)
- outline the circumstances when applicants may be asked for further information. For example, Taranaki Regional Council lists the following circumstances for requesting further information for activities requiring a discharge permit:
  - (a) the standard application forms have not been properly completed
  - (b) the application does not adequately describe the nature or location of the proposal
  - (c) the application does not specify, or inaccurately specifies, other consents that may be needed to undertake the activity
  - (d) in the case of any controlled or restricted discretionary activity, when the application and the accompanying information is not sufficient for the Council to be able to assess the matters to which it has restricted its discretion over or in respect of which it has reserved control (as the case may be)

- (e) in the case if any discretionary or non-complying activity, the application provides insufficient information:
  - (i) to enable the actual and potential adverse effects of the activity to be identified
  - (ii) relating to the ways in which any adverse effects are to be mitigated
  - (iii) regarding the identification of other parties who may be affected, or
  - (iv) regarding other parties who have been consulted or their views, or both
- (f) there is uncertainty regarding the need or purpose of the consent
- (g) there are reasonable grounds to suggest that alternative locations or methods of undertaking the activity may be both feasible and would have less adverse effect on the environment than the proposed option, or
- (h) a report is required to be commissioned to fully assess the effects of the activity or to audit any information provided by the applicant.

**Specific information requirements should also be expressed in the plan.**

**Specific information sections of the plan should:**

- act as a link between the information required by your council and the information the AEE should address by relating information needs to specific issues identified in the plan
- be located either next to the appropriate rule or policy or in the information section and cross-referenced to the appropriate rule. For example:

Particular information required for a consent application for a discretionary activity under Chapter 5, Rule 2:

- (i) The effects on flows of water in the Opihi River and its tributaries.
- (ii) The effects on flora, fauna, and the habitat of fauna, on cultural, amenity and landscape values.
- (iii) Details of provisions to be made for fish screens and fish bypass.
- (iv) The effects on the availability of augmented water for abstraction and the efficiency of the use of that water.
- (v) The safety of a dam in terms of its construction and design and risks and effects of a collapse of any structure.
- (vi) Proposed financial contributions in the form of money, land, works, services or any combination thereof, to restore or offset any damage to or loss of any natural or physical resources.

- refer to any baseline data your council may have collected and have available, or to the availability of baseline data outside the council
- state any preferred forecasting methods and why they are preferred
- where specific results are required (for example, a waste management plan), refer to the level of detail (content) expected in the report.

**Consider making specific checklists available at the counter.**

Council checklists are not substitutes for AEEs. However, for controlled or restricted discretionary activities they may give a clear indication of what the AEE must address by describing the matters over which control is retained or discretion exercised.

Checklists for applicants can also double as checklists for receiving applications over the counter. They provide a guide to the information sought and enable differences of opinion to be discussed on the spot.

Like plan requirements, checklists can be divided into general and specific categories. On a general level, they summarise the plan's broad requirements, while on a specific level they can target activities commonly lodged with the council.

Design checklists so that at the end of the process all the boxes are ticked "yes". As there may be valid reasons for a "no" response, checklists should also ask "if not - why not?".

**Step 3 Pre-application meetings<sup>6</sup> -**

**generally required for complex applications only**

**Pre-application meetings gather together the various parties likely to be involved in a potentially complex application. They can be a useful way of considering and resolving issues before the application is finalised.**

Pre-application meetings are organised by one person (usually the person responsible for processing the application) and involve people such as staff from resource management administration and policy areas, and those from specialist fields (eg, traffic, air quality, water management).

**The meeting should ensure that, when the application is lodged, it contains all the relevant detail.**

The meeting aims to:

- provide the council and others with the opportunity to contribute to the process
- ensure everyone involved understands how the plan is interpreted
- clarify any additional information requirements (ie, hazardous or contaminated sites)
- receive early feedback and advice, which is agreed and recorded on file.

<sup>6</sup> *Pre-application meetings differ from pre-hearing meetings, which occur anytime after a resource consent application has been lodged. Refer to the Ministry for the Environment's Pre-hearing Meetings: Good Practice Guide (1999).*

This should ensure the applicant scrutinises their proposal as closely as possible and produces a correspondingly targeted and appropriate AEE.

You are there to provide information (as opposed to advice). The meeting can also be used to agree on:

- the information to be provided
- the types of modelling or risk analysis to be undertaken - including any assumptions
- the acceptability of the baseline data
- any consultant involvement. This could include agreeing on the brief to the applicant's consultant, thus reducing or avoiding an audit of that particular specialist's work.

**The pre-application meeting is not the place to pass professional judgement on an application.**

Any parties “co-opted” into the process should acknowledge and understand their responsibilities and give their full commitment to the process. They should understand that any differences of opinion will be acknowledged but, while issues should be negotiated as far as possible, the proposal must still be assessed through the statutory process. Nevertheless, if your past experience indicates the proposal is marginal or unlikely to be approved, the applicant should be made aware of this. This can save them and you considerable time, money and frustration.

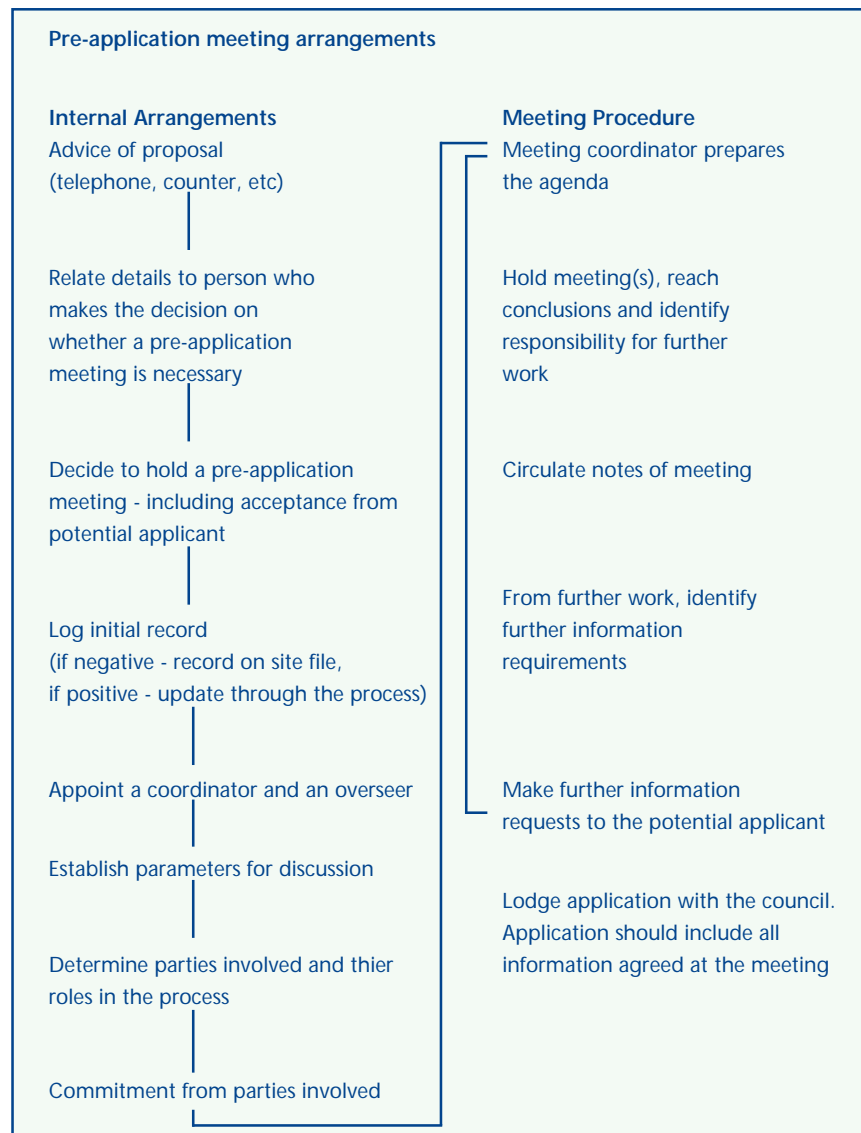
**The meeting venue and time should be pre-agreed and the meeting properly organised and run<sup>7</sup>.**

Have pre-agreed guidelines on consents that may need a pre-application meeting. These may include applications where auditing involves a number of council people, such as subdivision which leads to the creation of new streets, or an activity that is likely to involve risk analysis, such as air discharges over a certain level.

Make one person responsible for determining when a meeting is required and another for its organisation. A second, more senior person may be involved as a “buddy” in overseeing the process, recording the detail of the meeting(s) and giving guidance and help as required. Advise the applicant if the pre-application meeting will incur a charge.

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<sup>7</sup> Refer also to the Ministry for the Environment's 1998 publication entitled *Pre-hearing meetings: A Good Practice Guide*.



**If a pre-application meeting has not been held, a post-lodgement meeting may be appropriate.**

Not all applications will be drawn to your attention before they are lodged. In this situation, a post-lodgement meeting can have considerable benefit. It can check the application's quality and content and be used to determine and agree on any further information requirements (although the timeframe for organising and holding the meeting will be tight). The meeting's main function is to audit information and ensure all the activity's potential effects have been identified and analysed in an accurate and integrated way.



## Receiving the application



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## 4.0 Receiving the application

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*If done properly, the application checking phase can avoid potentially major problems*

**The applicant, not you, is fully responsible for providing sufficient and appropriate information for an audit. It is your role to check applications for basic information requirements before they are received for processing.**

This pre-acceptance check ensures that the appropriate information has been provided and starts the “processing clock”. It is not a thorough check of the information's level of detail or accuracy.

**Deficient applications should be rejected.**

As accepting the application starts the clock ticking, it is critical to receive only applications that contain the required information. The Court has suggested this, although a determination has not been made to this effect. For example, in *Scott & Others v New Plymouth District Council*<sup>8</sup> the Court found that it may have no jurisdiction to hear a case where an AEE is deficient (in so far as it did not substantially comply with the Fourth Schedule). Whether applications are received through the mail or over the counter, they need to go through the same rigorous process and be rejected if they lack the necessary information.

Make a point of checking the detail against the information requirements in the plan and any checklists. For over-the-counter applications, go through the checklist with the applicant.

If the plan requires a particular type of assessment for a particular application and an applicant wants to lodge their application without one, simply tell them that the application will not be accepted<sup>9</sup> (this may require training and support for counter staff).

**The checking process should be consistent.**

It is important to have a degree of consistency between the people receiving the application and those assessing it. This should be straightforward if the plan and information requirements are clear, as the person receiving the application is not required to make any judgement on the suitability of the material.

Group discussions, team meetings and independent auditing should help ensure consistency in the process, as will having the applicant complete a standard pre-application checklist (and having the receiving staff member assess its completeness).

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<sup>8</sup> Refer W091/93 3 NZPTD 116.

<sup>9</sup> The requirement should, however, be as a result of an objective requirement in the plan and not merely in the opinion of the person accepting the application. Only the information that is required should be checked at this stage - the detailed assessment of its quality comes later.

### Receiving the application starts the processing clock ticking.

Once an application is received over the counter stamp it as “received” and start the clock. Attach a processing sheet to the application, then date stamp and initial it.

#### Good practice guidance for receiving applications

- Ensure you know about the information required by the RMA.
- Ensure information requirements are clearly specified in the relevant plan.
- Use support structures, group discussions, meetings and independent auditing to ensure a consistent approach.
- Ensure the applicant understands the pre-acceptance check is for information only and does not assess the information's detail.
- Give the pre-application check the utmost attention. If it is likely to take some time, have experienced staff and private office space available.
- Ensure that pre-application checklists (if available) are properly completed.
- Reject applications with insufficient information.
- Provide a written statement of what is missing so that the pre-application check does not have to be repeated in full when the application is brought back.
- Ensure the council's political arm is aware of and will support the requirements for preparing and lodging applications for resource consent.
- Use processing sheets to record applications' progress.

**Processing sheet**

(for applications other than coastal permits relating to restricted coastal activities)

(Note this checklist addresses only the key stages in the processing procedure. Many can be broken down further. The checklist should be used as a basic template and developed according to your council's specific practices.)

**Application number:**

Stage of the Process	Person Responsible and when Received	Date Completed	Time Period
Accept the application			"Clock starts now"
Allocate the application			Day received or following day
Undertake initial assessment of application			Day allocated or following day
Undertake site inspection			Within seven working days
Refer to internal assessors or for initial specialist comment if necessary			This should not stop the clock as it is an assessment of information requirements and not a request for further information
Collate material			Within eight working days of receipt of application or specialist report (preferably sooner in the case of specialist report)
Seek further information where necessary. Discuss effects with the applicant and determine who obtains specialist reports, if required.			Within 10 working days of receipt of either application or specialist report. Develop a separate processing sheet and attach it to any objection to a request for further information
Consult with tangata whenua, if required			Consultation should not be limited to this stage of the resource consent process

Stage of the Process	Person Responsible and when Received	Date Completed	Time Period
Ensure all information required is now obtained			In time for decision on notification /non-notification to occur
Make decision to notify or not			Application should be notified within 10 working days of receipt of further information or specialist report. Decision to notify should be made a few days earlier
<b>(If notified, attach and follow supplementary processing sheet from this point on)</b>			
Write report			In time to notify decision within 20 working days of receiving application or further information
Make decision (no hearing)			In time to notify decision within 20 working days of receiving application or further information
Notify applicant			Within 20 working days of the application being made or of receiving further information
Record if any appeals/ objections lodged			Within 15 working days of receipt of decision

### Supplementary processing sheet

(for NOTIFIED applications other than coastal permits relating to restricted coastal activities)

*(Note this checklist addresses only the key stages in the processing procedure. Many can be broken down further. The checklists should be used as a basic template and developed according to your council's specific practices.)*

Application number:

Stage of the Process	Person Responsible and when Received	Date Completed	Time Period
Notification			Within 10 working days of receipt of application or of further information
Receive and acknowledge submission(s)			Within 20 working days of notification
Request more information (Develop a separate processing sheet and attach it to any objection to a request for further information)			At any time until the hearing. As this will again "stop the clock" further information should, if required, be sought as soon as possible after submissions are received. Have a policy on requesting information at this stage in the process
Receive information			
Hold pre-hearing meeting, if applicable			Within sufficient time to consider its results before setting a time for the hearing
Set and advise of hearing date			Advice must be given at least 10 working days before the hearing
Write the report			In sufficient time to be distributed as early as possible before the hearing but at least two working days
Distribute the report			To all parties at least five working days before the hearing
Hold the hearing			Within 25 days from the closing date of submissions
Make the decision			In time to meet the timeframes for distributing the decision
Distribute the decision			Within 15 working days of the hearing or as soon as reasonably possible if the application is notified and no hearing is required
Record lodging of appeals/objections			Within 15 working days of receipt of decision





## Allocating the application



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## 5.0 Allocating the application

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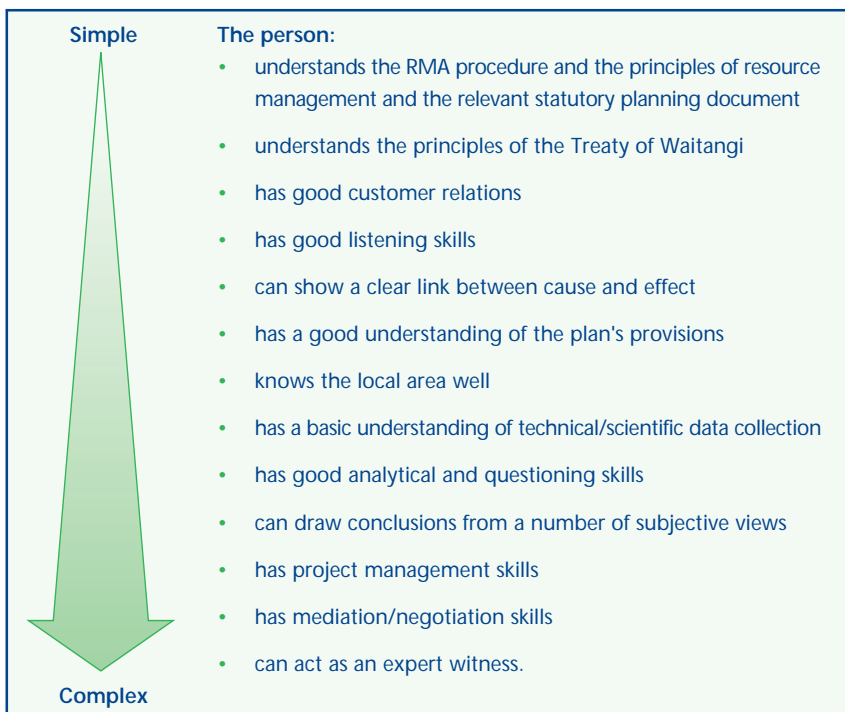
*Ongoing skills development and training should be a priority to ensure councils have access to the skills they need.*

### **Allocate applications for processing on the basis of the skills required to do the job.**

The person who allocates the applications should be experienced and understand the strengths and limitations of the staff. While processing AEEs is relatively straightforward, the skill required to process various applications is significantly different. Applications should ideally be allocated according to their perceived complexity and staff skills and experience.

Every application should be allocated to one person, who is responsible for its processing (including compliance with the timeframes and co-ordinating specialists). While using consultants to process "overflow" consents is common practice, the application should still be allocated to one person (perhaps a consents or contract manager) who is ultimately responsible for ensuring timelines are met. This should be enforced through contractual requirements.

### **Key knowledge/skills required to process applications:**



**Seek specialist input where there are gaps in the staff skills.**

Using specialists is now common practice - not just to audit specialised information, but also to process consents. Deciding whether to use such specialists will depend on whether appropriate staff are available. If using a consultant, ensure they have the appropriate experience and skills, are accessible to the site, and where possible have a good general knowledge of the locality.



## Processing and evaluation



## 6.0 Processing and evaluation

A pre-hearing meeting may be useful during this stage of the process. Refer to the Ministry for the Environment's *Pre-hearing Meetings: Good Practice Guide* (1999) for more details.

### Step 1 Initial assessment of the AEE

AEEs developed without a pre-application meeting ...	AEEs developed following a pre-application meeting ...
<p><b>(a) Three key functions of the initial assessment:</b></p> <ol style="list-style-type: none"> <li>1. Check what resource consents are required and that the applicant has applied for all of them.</li> <li>2. Check the effects that have been identified - are there any additional ones needing assessment? Has the information required by the plan(s) and the Fourth Schedule been included to the level of detail required?</li> <li>3. Determine the application process (ie, public or without notification).</li> </ol> <p><i>NB: If the application looks potentially difficult or beyond the skills of the person processing it, the allocating planner may consider it appropriate to reallocate it.</i></p> <p><b>(b) Determine the application's scope and complexity, including assessing any cross-territorial issues.</b> Do the identified effects need to be avoided, remedied or mitigated? If so, is this possible?</p> <p><b>(c) Identify any aspects of the application that need specialist advice.</b> Discuss with the applicant the information to be provided, who is to provide it and how much it is likely to cost.</p> <p><i>NB: Council staff should confirm their ability to process the application.</i></p>	<p><b>(a) Identify issues.</b></p> <p>The pre-application meeting will already have sorted out the issues relevant to the application. Check that the application and the AEE address all relevant effects previously identified.</p>

(a) **Check that the appropriate consents have been applied for**

- Check for compliance with the relevant rules.
- Check all rules and note if any are not met. State:
  - the degree of non-compliance
  - whether the plan requires any particular affected party's consent and
  - whether this consent has been obtained.

Consider developing a standard checklist for simple and common applications which incorporates checks against the rules' purposes. Appendix 2 has an example of a targeted checklist.

(b) **Check that the appropriate effects have been identified**

“Effect”<sup>10</sup> and “environment”<sup>11</sup> are defined broadly within the RMA. Part of the AEE's role is to identify and understand particular *effects* on the proposal's particular *environment*.

The term effect includes:

- positive and adverse effects
- temporary and permanent effects
- past, present and future effects
- any cumulative effects regardless of degree or element of risk.

The definition is not an effect on a plan or proposed plan. It is concerned directly with the natural and physical resources and their environment.<sup>12</sup>

The wider definition of environment in section 5(2)(c) includes:

- natural and physical resources - the tangible resources of land, water, air, soil, minerals and energy, all forms of plants and animals and all structures (including the “built environment”)
- the values placed on those resources.

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<sup>10</sup> In the RMA, unless the context otherwise requires, the term “effect” includes:

- (a) Any positive or adverse effect; and
- (b) Any temporary or permanent effect; and
- (c) Any past, present, or future effect; and
- (d) Any cumulative effect which arises over time or in combination with other effects - regardless of the scale, intensity, duration, or frequency of the effect, and also includes-
- (e) Any potential effect of high probability; and
- (f) Any potential effect of low probability which has a high potential impact.

<sup>11</sup> Environment includes:

- (a) Ecosystems and their constituent parts, including people and communities; and
- (b) All 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.

<sup>12</sup> *Manos and Another v Waitakere City Council* HC Auckland, J Blanchard, 28/6/94 AP 17/93, 3 NZPTD 493. See also *Gardner v Tasman* DC W64/94 3 NZPTD 701.

### Notes on the use of the term “effects”

#### Minor effects:

- Current case law sways towards comparing the current state or use of the property. Minor effects are not identified by comparing them with what is allowed to take place on the property as of right. The leading case on this is *Hanton v Auckland City Council* [1994] NZRMA 289.

#### Positive versus adverse effects:

- Both positive effects and adverse effects should be considered, regardless of whether they are temporary or permanent, past, present or future or cumulative. Each one will have varying degrees of significance.
- In *Campbell v Southland District Council* (W114/94), the Tribunal noted that section 5 is not about achieving a balance between the benefits resulting from an activity and its adverse effect. It requires adverse effects to be avoided, remedied or mitigated irrespective of any benefits that might accrue.

#### Future effects:

- Considering future effects appears to suggest a preference for effects that are reversible. That is, if people who are generating adverse effects are aware of them and take steps to address them, the stock of natural and physical resources should be passed on to the next generation in no worse condition, and sometimes in better condition, than it is now. Naturally this does not apply to minerals, which are excluded from section 5(2)(a) of the Act.
- In *Aquamarine Ltd v Southland RC*<sup>13</sup>, a case involving an application for consent to export fresh water from Doubtful Sound, ships involved would discharge ballast as they came and went from the Sound. This activity does not require consent but still has adverse effects. The Court found that all the proposal's potential effects had to be considered - including the effects of an interrelated activity which did not require consent by itself, and indeed would not even be under the applicant's control.

#### Cumulative effects<sup>14</sup>:

- In *W & E Goodwin & Others v Auckland City Council*<sup>15</sup>, the Court found that an adverse cumulative effect is an effect which, when combined with other effects, is significant only when it breaches a threshold. It found that cumulative effects' consideration should focus on the scale and nature of effects in combination, not on preventing the activity in case others like it should be proposed. Implicit in the concept is that having one activity approved does not mean that another will be as well.

<sup>13</sup> [1996] 2 ELRNZ 361.

<sup>14</sup> *The potential for others to seek resource consent on the basis that a similar activity has already been approved is a precedent effect rather than a cumulative effect. The Courts have found that precedent effects are not a matter to be considered when assessing effects of a proposal. See Barker v Franklin District Council A 070/98.*

<sup>15</sup> *Refer A 22/98.*

- In defining cumulative effects, the community needs to contribute. The concept of cumulative effects presupposes that environmental thresholds (upper and lower limits) are set. This may be different according to the resource and the community's values. The relevant plan should describe such thresholds through its objectives and policies.
- Cumulative effects' assessment may alert you to the need for a subsequent change to the plan.

**Effects of high and low probability:**

- It is important to consider forecast effects, as some may take time to show. While forecasting inevitably requires specialist technical expertise, you have an important role in co-ordinating the different forecasts, ensuring their relevance to the planning decision and ensuring that the methods used and effects forecast are comprehensible to the lay person.

**Uncertain effects:**

- In *Telecom New Zealand Ltd v Christchurch City Council*<sup>16</sup> the Judge made the following statement: *"It would be wrong in principle for the Court to fly in the face of that body of accumulated knowledge merely because it was not possible to demonstrate beyond any doubt that the technology was safe. No human activity can go forward on that basis and it would be a misuse of the Court's discretion to reject this application by approaching the matter in that way".*

**The effects to be considered will depend on the type of application.**

*For controlled and restricted discretionary applications:*

- list the effects that need to be considered in accordance with the matters over which your council has retained control discretion. Do not venture into other areas except in the unlikely event that Part II matters will be compromised by the application. Do not be tempted to address other matters just because the applicant has chosen to do so.

*For discretionary and non-complying applications:*

- identify all the activity's potential effects, not simply the non-complying aspects
- list the effects the AEE identifies and those it does not
- use the relevant issues in the plan to identify any effects that may need to be addressed
- distinguish the nature, extent and magnitude of the effects and the significance of their consequent effect on the environment. Identify the impact (eg, instantaneous, continuous or intermittent, of long- or short-term duration).

An assessment of alternatives should only be required if there is the potential for significant adverse effects<sup>17</sup>.

<sup>16</sup> See W165/96.

<sup>17</sup> Refer to the Fourth Schedule and to section 88(6) of the RMA.

For each effect:

**Identify the effect<sup>18</sup>:**

Summarise any assessment techniques used.

- (1) Has the effect been adequately assessed?
- (2) Is the assessment accurate? (Is it based on sound predictions or just guesswork?)
- (3) Has the consent of all affected parties been obtained?
- (4) In the particular environment, is the effect likely to combine with any other identified effect (be cumulative)?
- (5) Are there any mitigation measures proposed?
- (6) What is the effect's significance judged to be?
- (7) If they are not minor, are the remaining effects acceptable?
- (8) Do you need any more information before the above questions can be answered?

**(c) Involving Specialists**

Specialist auditing and reporting are quite different functions.

You should seek specialist advice if you believe that a proposed activity could have a significant adverse effect on the environment. You can commission a review of information received (audit) and/or commission your own specialist report on the application's particular effects.

The first option may be appropriate if you wish to be seen as impartial (for a controversial application) or where the application is highly technical and internal staff do not have the resources (including time) or the expertise to provide such information.

When contracting such, be clear about its purpose. If you have commissioned a specialist to conduct the review, you should not have to re-audit the specialist's work. If you wish to commission your own report, the applicant should first have the opportunity to discuss/dispute the requirement to provide such information and/or to obtain the information themselves.

**Consider carefully whether specialist input is required.**

Even if your resource management professionals do not fully understand specific environmental areas, they can make judgements on whether specialist advice is needed (when guided by objective criteria in the plan or by information supplied by professionals). They should seek specialist advice as a conscious acknowledgement that they do not have the specific skills required to analyse an effect or carry out the audit.

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<sup>18</sup> Adapted from material produced by Canterbury Regional Council.

Some councils have agreements to use certain specialists for complex applications. Agreement on the consultant and the guidelines for preparing the work can also mean the specialist's report is acceptable to both the council and the applicant. This is particularly useful in communities without specialists in specific environmental areas and where it is expensive and difficult to obtain specialist environmental advice.

#### **Good practice guidelines for involving specialists in the audit process**

- Let the applicant know that a specialist report is required. Discuss the reasons and the type of information the specialist will provide. Give the applicant the opportunity to obtain the required information themselves. If this is not practicable, advise them of the anticipated cost of their involvement and check that they still wish to go ahead.
- Advise the specialist that an audit is required, not a repetition of the application's detail.
- Identify the right person for the job by clearly defining the applicant's and your objectives. Know the area of expertise of the person or organisation contracted.
- From the material that was used to decide on specialist help, define the specialist's role. Advise them of any objective criteria in the plan against which they have to make a judgement.
- Set clear timeframes and clear cost guidelines or an agreed price.
- Let them know if any consents of affected parties have been obtained and what this means when considering effects (section 104(6)).
- Ask the specialist to find out if any research and additional consultation needs to be done and to confirm this with you before doing it.
- Specify the desired results. The report should:
  - focus on the detail of the proposal's particular effects, and avoid matters outside the application unless they are relevant to that proposal's effects
  - advise whether the identified effects could, if combined with other effects related to the activity or the site and locality, create different effects from those anticipated, or whether any effects identified are likely to change over time
  - consider when conditions could be imposed to avoid, remedy or mitigate the activity's effects.
- Ask the specialist to provide a clear summary, plainly targeted and with no jargon, of any effects and what should be done to address those effects.
- Ask the specialist to send information requests to (or through) the processing officer for checking before they go to the applicant. Set a deadline for sending them to you.

**(d) Make sure you meet your obligations to consult with Maori**  
While it is generally accepted that there is a duty to consult, case law has not developed a definitive answer to the question of who should consult, at what stage and in what circumstances.<sup>19</sup>

The duty to consult happens at two distinct stages of the resource consent process:

1. When the application is prepared. This type of consultation is covered in the Fourth Schedule of the RMA, and is not mandatory. However, it is particularly wise to consult if a matter is known to be of particular importance or concern to Maori. The Environment Court has stated that it is recognised good practice that applicants for resource consent consult with tangata whenua where a proposal may affect the matters referred to in sections 6(e) and 7(a) of the RMA<sup>20</sup>.
2. While the application is processed. You must consult to meet your obligations under Part II of the RMA.

Case law is not clear on whether consultation undertaken under section 8 is mandatory. For example, in *Ngatiwai Trust Board v Whangarei District Council*<sup>21</sup> the Court essentially indicated that consultation was not obligatory. This is contrary to the approach in *Gill v Rotorua District Council*<sup>22</sup>, which identified a positive duty of consultation on the council officer.

Case law does not clearly identify the best time for consultation.<sup>23</sup> However, it does confirm that you must be careful to consider the supporting information you ought to require in the particular circumstances and who is likely to be directly affected by the application.<sup>24</sup> It also establishes that failure to consult, including yours, could result in the application being declined by the Environment Court<sup>25</sup>. In *Hanton* Judge Sheppard noted<sup>26</sup> that where

*“it is known that natural or physical resources, the subject of a resource consent application, are the object of a valued relationship by Maori people, an adviser preparing a report on the application for a consent authority should investigate and report on the extent to which the proposal would affect the relationship”.*

<sup>19</sup> The duty to consult has been established as a principle of the Treaty of Waitangi by the Court of Appeal, *NZ Maori Council v Attorney General* [1989] 2 NZLR 513 (CA) 42,52. For a discussion of case law regarding consultation pursuant to section 8 of the RMA refer to *Ministry for the Environment, “Case Law on Consultation: case law under the Resource Management Act 1991, regarding the issue of consultation with tangata whenua to May 1995”*, 1995.

<sup>20</sup> *Paihia & District Citizens Assn Inc v Northland Regional Council* A77/95.

<sup>21</sup> A007/94 3 NZPTD 197. Cited with approval in *Hanton v Auckland City Council* A010/94 3 NZPTD 240.

<sup>22</sup> [1993] 2 NZRMA 604.

<sup>23</sup> For a discussion of this case law refer to Paul Beverley's article entitled “The Incorporation of the Principles of the Treaty of Waitangi into the Resource Management Act 1991” as contained in the *New Zealand Journal of Environmental Law*, 1(1):125 - 162 (1997).

<sup>24</sup> *Ngatiwai Trust Board v Whangarei District Council* A007/94 3 NZPTD 197.

<sup>25</sup> *Marlborough District Council v Marlborough Mussel Company* W112/97 and *Marlborough Seafoods Ltd v Marlborough District Council* 1998 NZRMA 241.

<sup>26</sup> Note 15, at 302.

Case law indicates that consultation is required if you are aware that tangata whenua have a special interest in a site or where they have expressed to you their interest in or concern about a project. For example, Ngai Tahu's specific interest in a site may be indicated by a statutory acknowledgment or nohoanga entitlement, as set out in the Ngai Tahu Claims Settlement Act 1998.

#### Council officers can consult.

In *Whakarewarewa Village Charitable Trust v Rotorua District Council*<sup>27</sup> the Court identified that council officers meeting with tangata whenua so that they could properly explore all the issues in order to brief their councillors adequately, met the council's obligation under the principles of consultation implicit in the Treaty of Waitangi.

This approach was confirmed in *Mangakahia Maori Komiti v Northland Regional Council*<sup>28</sup>, where Judge Bollard noted that the consent authority behaved appropriately in leaving it to the council officer to consult, and that the council officer could do little more, in the view of the Court, “*than listen, as he did, to the concerns conveyed to him by the representatives of the komiti, and having done so, record those concerns in his report to the council*”.

However, the Court refused to accept that a council officer should have been actively involved by exploring how concerns could be responded to and accommodated in the context of realistic planning options. It cautioned that while a consent authority may encourage consultation between applicants and tangata whenua, if the two sides have clearly opposing viewpoints the consent authority cannot prejudge its own position as a quasi-judicial body by seeking to reach an understanding with one party to the disadvantage of or at odds with another party.

In *Rural Management Ltd v Banks Peninsula District Council*<sup>29</sup>, Judge Treadwell also cautioned that:

*“If there is to be any consultative process, it can be undertaken by officers of the consent authority who can report back to the consent authority and whose report is open to all parties to accept or contest as the case may be. Those officers cannot however consult on behalf of the consent authority; they can merely consult as officers for the purpose of obtaining information which can then be relayed back to the consent authority for its consideration along with other evidence”.*

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<sup>27</sup> W061/94 3 NZPTD 676.

<sup>28</sup> [1996] NZRMA 193.

<sup>29</sup> [1994] NZRMA 412.

### Council officers need to be proactive and informed about Maori interests.

Case law identifies that notifying an application is, in itself, not enough to satisfy the requirements of section 8 of the RMA<sup>30</sup>. It also cautions that there may be a risk of distorting the views of Maori if those views are conveyed to the council by the applicant. It also confirms that, irrespective of whether consultation is done by an applicant for resource consent, council officers have a duty to ensure that their advice to the council addresses all the relevant issues it needs to consider to make an informed decision (including independent consultation, where appropriate).

### Decide the appropriate level of consultation on a case-by-case basis.

In *Mason-Riseborough v Matamata-Piako District Council*<sup>31</sup> the proposed activity affected a mountain referred to in the proposed district plan as “Maori Historic Sacred Mountain” and recognised as waahi tapu. The Court held that, in this case, consultation is to be approached in an holistic manner, not as an end to itself, but in order to consider the relevant Treaty principles. The Court concluded that section 8 obliges the council to initiate, facilitate and monitor the consultation process as part of its duty to take into account the Treaty of Waitangi.

So the principles of the Treaty of Waitangi are more than just consultation. You have an obligation to recognise tino rangatiratanga, including managing resource and other taonga according to Maori cultural preference. You also have the obligation of active protection. Both principles require positive action and access to enough quality information to be able to fully consider the implications of the application on those interests. That duty will sometimes oblige the person reporting to you to consult with tangata whenua. At other times an applicant’s consultation may be enough.

For more discussion on iwi consultation refer to the Parliamentary Commissioner for the Environment’s 1998 report *Kaitiakitanga and Local Government: Tangata Whenua Participation in Environmental Management*.

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<sup>30</sup> *Gill v Rotorua District Council* (1993) 2 NZRMA 604.

<sup>31</sup> A143/97, 3 NZED 33.

### **Good practice guidelines for meeting your obligations to consult with Maori**

Case law is still developing in this area, so good practice includes taking a cautious approach to processing applications.

- Encourage applicants to consult with iwi early in their proposal development, especially if it is known that iwi may have a particular interest in that proposal.
- For South Island staff, be familiar with the Ngai Tahu Claims Settlement Act 1998.
- Establish practical ways to encourage proper consultation, such as:
  - identifying which iwi have a particular interest in which areas and which types of applications
  - knowing who the appropriate iwi contact or contacts are
  - establishing protocols for referring matters or applications to iwi (including identifying the likely costs associated with and timeframes required for developing a response).
- If an applicant has consulted with iwi and the result is reported in the application, notification may be enough to meet the section 8 requirements. However, this needs to be decided on a case-by-case basis.
- If an applicant has not consulted or not sufficiently consulted with Maori in a case involving matters of interest and/or concern to Maori, the council officer preparing the report should carry out such consultation.
- Ensure that enough information of an appropriate quality goes with any application so that everyone can fully consider its implications on their interests. Ensure consultation with iwi happens when they have enough information to make an informed judgement.
- If you believe that the proposed activity may have a significant adverse effect on iwi interests, you can require the applicant to provide an explanation of their consultation, pursuant to section 92 of the RMA.
- If the Treaty of Waitangi principles require you to undertake significant consultation, consider appointing an independent commissioner to decide on the application.
- Ensure that the assessment is suitably comprehensive and addresses all the relevant issues. The report should address the procedures for undertaking iwi consultation (or why it was not done) and how matters arising have been addressed and any recommendations.
- If the individual facts of the case identify issues that are significant to Maori, consider the broader Treaty principles that both guide and complement consultation.

## Step 2 Undertake a site inspection

The site inspection allows an “on the ground” check of the application's accuracy, including the accuracy of the AEE. It is a vital part of the assessment process.

The site inspection helps to identify the effects of a proposal and to compare them with what is recorded in the AEE. It allows you to familiarise yourself with the site and its environs and to check the plans are accurate.

### Make a permanent record of the site.

Photographs of the site may be required as part of the assessment. They can be particularly useful for identifying elements on the site (such as a tree) or for discussing the potential effects with other people. For medium or complex applications, a photo montage (which either covers the portion of the site affected by the proposal or completely covers all aspects of the site and locality) helps in making the recommendation for the audit, in decision-making and monitoring and is a particularly good record of any unusual site features, eg, vegetation, topography.

Record exactly when the photo was taken, where it was taken from and through what sort of lens.

#### Good habits before going on site:

##### Check:

- the council records/ files for specific details on the site
  - the plans, to make sure you have a good idea of how the site should look.
- Make a checklist of points to note.

##### Arrange:

- when an application is more complex, to take other staff or specialist advisers so you can discuss aspects of mutual benefit.

##### Phone the applicant:

- to let them know about the inspection and whether you need to meet them or their advisers on the site
- to ask if there are dogs on the property
- to ask them to advise their neighbours that you will be going to the site.

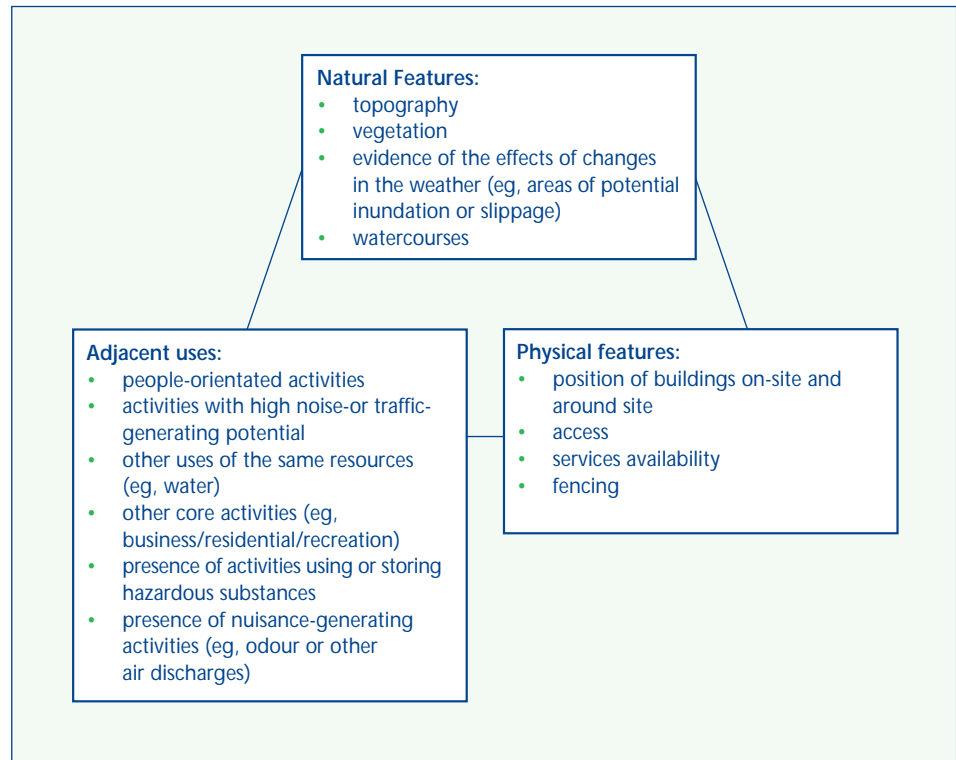
##### Pack:

- identification
- plans
- tape measure
- scale rule and pencil
- tree identification book
- sandshoes or gumboots - depending on the terrain
- any specialist equipment
- camera
- mobile phone.

### What to look for on site:

Make sure you are on the right site.

Record the site details on the plan. Look for accuracy in the plans and the AEE. This will vary depending on the application and its effects, but includes *the relationships between the proposed development and the features of the site*, such as:



### What to tell the neighbours:

If neighbours approach to ask what is happening, discuss the proposal with them (the application is public information). These discussions can contribute valuable local knowledge to the assessment. However, as the applicant is paying for the time spent on the inspection, keep conversation to a minimum and remain objective.

### Step 3 Collate material gathered and seek further information if necessary

#### Any further information sought must fill a significant gap in the application.

Only seek further information if it is significant to:

- understanding or describing the application
- the effect(s) of the proposed activity on the environment
- the ways any adverse effects will be mitigated.

It is preferable to cover specific matters with a condition than to unnecessarily extend the processing time. Any further information sought should not broaden the application's scope, cover information that you should know or be used to fix deficiencies in the plan.

#### There should be only one request for information.

Any specialist advisers' requirements should be included in the single request for further information. Specialist advisers should not contact the applicant directly, but should have you first check their requests for information to ensure they are reasonable - especially where specialists have little direct knowledge of the locality.

#### Be explicit about what is required.

Make requests for further information in writing, but phone the applicant first to ensure they are aware of the request, the information required and the reason. Applicants have the right of objection and appeal to any request for further information<sup>32</sup>.

#### Good practice guidance for requests for further information.

Requests for further information should:

- directly relate to the potential for significant adverse effects arising from the proposal
- lead to a better understanding of the application
- focus on areas of difference
- consider the implications of affected parties and section 104(6)
- not cover material that can be covered by conditions of consent
- be worded clearly and unambiguously
- give a reference number, a contact name and phone number for follow-up discussions
- let the applicant know they can object to any request for further information.

<sup>32</sup> Provision for appeal and objection is made in section 92. Appeal and objection processes are as for sections 357 and 358 of the RMA.

## Example: Section 92 Letter

Dear Mr Smith

### RE: Resource consent application - Request for further information

Under section 92 of the Resource Management Act 1991 the Mango Regional Council needs further information for your application for a resource consent to take water from Clark Creek at Coopers Bridge in the winter/autumn (our ref: W11282).

This further information is detailed below. It will help us to better understand your proposed activity, its effect on the environment and ways any adverse effects on the environment may be mitigated.

1. According to inflow information we consider that Clark Creek will not sustain the proposed rate of abstraction of 500 l/sec. To evaluate your application we need further information about the effects of the total quantity of water required (the maximum that will be abstracted in one day and the rate of abstraction). In particular, you need to look at the potential effects of your activity on the breeding habitat of the Torch Fish. Attached is some of our flow information, which may help you decide a more suitable rate of abstraction.
2. The proposed location of the abstraction site is not considered suitable as the drawdown effect will disrupt the existing flow-measuring structure at the weir. This does not appear to have been considered in your assessment of effects of your activity. Please investigate alternative locations and how any adverse effects on the environment may be avoided, remedied or mitigated in an alternative location.

In accordance with the Resource Management Act we will postpone processing your application until we receive this information. Once we have received adequate information, we will make a decision on whether your application requires notification. If it does, you will be advised within 10 working days of our receiving your further information. If notification is not required, we will let you know the decision on the application within 20 working days of our receiving the information. (This assumes that your response to the above requests is adequate.)

You can object to this request for further information by writing to the Council within 15 working days of receiving this request.

This requirement for information has been discussed with you. Please do not hesitate to contact Jo White on 486-9271 if you have any questions.

Yours faithfully...

#### Step 4 Decide whether to notify

The Ministry for the Environment's publication *To Notify or Not To Notify - A Good Practice Guide*<sup>33</sup> discusses the question of whether an application needs to be notified. It also contains helpful guidance on the principles of notification, and good practices for defining “minor” and “adversely affected parties”. South Island councils need to be aware of the special requirements for notification in the Ngai Tahu Claims Settlement Act 1998.

##### Ensure adequate consultation.

The Fourth Schedule directs applicants to identify people who are interested in or affected by their proposal. The Ministry for the Environment's Working Paper 3, Case Law on Consultation discusses the duty to consult and is helpful for answering questions about the adequacy of consultation. It discusses the consistent themes case law has revealed and appears to imply that consent authorities have a duty to ensure either that adequate consultation has occurred or that it does occur (by undertaking consultation itself).

Before deciding whether to notify an application, decide whether some or further consultation is justified. Refer that concern to the applicant and invite them to either consult and advise you of the result or complete consultation themselves.

##### The decision-maker on notification will, to some extent, determine the nature of the audit report.

One of the biggest questions in the AEE audit process is who makes the decision on notification. This is affected by the level of detail in the AEE audit report. The decision may be delegated to a council officer or may need to be made through the political process. If it is not made by the council officer, the decision-maker should not have to re-read the application to make a judgement on its effects and thus repeat work already done by staff.

A report on notification should be brief and address the question of minor effects and affected parties' approval only. It should confirm whether affected parties' approvals are required (and where this has been obtained) or state that there are no affected parties. It should have attached the initial effects analysis and/or the council checklists, including a note of those effects that will require conditions to avoid, remedy or mitigate them.

To avoid duplicating process and assessment, the same person should continue processing the application once the notification decision has been made.

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<sup>33</sup> Published by the Ministry for the Environment, October 1997.

**If the application is notified, advise the applicant beforehand.**

If the application is to be notified, phone or fax the applicant and advise them, giving specific reasons for the recommendation. However, notification should only be done once all the required information has been received. Do not rely on the submission process to identify gaps or deficiencies in the application or to produce specialist reports.

If the application is notified, a sign needs to be placed on the site. Offer the applicant the opportunity to do this personally, with clear instructions on where the sign must be placed. Ask the applicant to write back confirming that the sign has been erected and when, and including a sketch map of the sign's location.

As submissions are received, summarise their key points. If the application has not addressed them, decide whether they need to be addressed. Discuss the conclusions with the applicant or submitter and seek further information as required.

**Core information required in a notification report<sup>34</sup>**

- 1. Has a site visit been carried out?**  
No (list the reasons why and go to 2)  
Yes (go to 2)
- 2. Is there a relevant plan or proposed plan?**  
Yes (go to 3)  
No (go to 5)
- 3. Identify the type of consent required:**  
Controlled/restricted discretionary activity (go to 4)  
Discretionary/non-complying activity (go to 5)
- 4. Does the plan expressly allow the application to be considered without having to obtain written approval from affected parties?**  
No (go to 5)  
Yes State if there are special circumstances that justify notification  
No (go to 8)  
Yes (list the reasons for this and go to 9)
- 5. Would anyone be adversely affected if the resource consent were granted<sup>35</sup>?**  
No (list the reasons. For a controlled activity go to 8; for a restricted discretionary activity go to 7)  
Yes (specify who is adversely affected and the reasons for this and go to 6)

<sup>34</sup> Adapted from material provided by Western Bay of Plenty District Council.

<sup>35</sup> Note that for controlled and limited discretionary consents you only have to obtain approval from people affected by the matters over which the council has control or discretion.

<p><b>6. Has written approval been obtained from every person who may be adversely affected by granting the resource consent?</b></p> <p>No (Go to 9)</p> <p>Yes (Go to 8)</p> <p><b>7. Will the activity have minor adverse effects on the environment?</b></p> <p>No (list the reasons/attach previous analysis. Go to 9)</p> <p>Yes (list the reasons/attach previous analysis. Go to 8)</p> <p><b>8. Proceed as a non-notified resource consent</b></p> <p>signature of person with delegated authority to make the decision date</p> <p><b>9. Proceed as a notified resource consent application</b></p> <p>signature of person with delegated authority to make the decision date</p>
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**Step 5 Check you are ready to write up your report**

By this time all the further information will have been received and you are likely to have a reasonably good understanding of the application and its likely outcome.

However, make sure the analysis is clear. If the application is likely to fail on one matter and all other matters are acceptable, say so - and focus on the problematic matter in the report. In some circumstances, it is valid to refuse consent to an application because the application has failed to adequately deal with one significant adverse effect.

Use a checklist to decide if the report writing can start. (This could be the final check on a checklist that began when the application was received.)

<p><b>Good practice guidance on milestones before report writing begins</b></p> <p>The audit procedure should ensure that the principle of sustainable management is promoted and that the following are confirmed:</p> <ul style="list-style-type: none"> <li>• all consents required have been identified</li> <li>• the statutory provisions have been followed</li> <li>• all the relevant issues/effects have been identified</li> <li>• enough environmental information has been supplied</li> <li>• suitably qualified people have appropriately analysed the effects</li> <li>• any assumptions are valid and data sources are sufficient</li> <li>• whether any consultation has been undertaken and, if so, whether the level of consultation was appropriate</li> <li>• whether affected parties' approvals have been obtained</li> </ul>
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- the conclusions reached in the AEE are considered to be correct or otherwise, and that the effects have not been over- or underplayed
- what modifications and/or conditions (if any) are needed to ensure that the adverse effects on the environment are minor, including any requirement to monitor the activity in operation.

### Step 6 Write the report<sup>36</sup>

#### A number of factors will influence the way the report is written.

While the report's general format will be the same whether the decision is made by your council or under delegated authority, a report to your council is likely to have a wider readership. This is particularly so if the matter is to go to a hearing that involves submitters. If the AEE contains technical or specialised material, a report to your council may have to précis some parts of it to ensure the effects are clearly understood.

A report made under delegated authority can be more technical, and can assume that the person making the decision understands the AEE. A report to a person making a decision under delegated authority should be able to rely on checklists to support a more detailed recommendation.

#### The audit report should not duplicate the AEE.

The audit report should assess the adequacy of the application and the supporting AEE and include an analysis of other matters required by the RMA and the plan (eg, objectives and policies).

The decision-maker should emphasise the application and the AEE lodged, then the audit, not the other way around. Applicants will not be happy paying for an audit that essentially restates their application over five or six pages then addresses an area of conflict in one paragraph with maybe one or two proposed conditions.

The audit report should focus on whether the effects identified as part of the AEE are correctly assessed and if not, why not. Its bulk should be on the recommendations and conditions, where appropriate. A copy of the application, notification recommendation and supporting effects checklists should be sent to the decision-maker as part of the audit report.

<sup>36</sup> "The Report" is commonly known as the "Officer's Report" or "Staff Report".

### Example of an audit report:

(Notified non-complying activity subject to hearing)

#### Application Number:

- 1.0 Site description:  
2.0 Locality description: as per the application  
3.0 Effects assessment:

Potential effects are as identified in the AEE attached with the application and discussed on the attached reference sheet (attach summation as per step 1(c) in section 6 of this guide).

The assessment of all effects other than landscape/amenity effects is agreed. There is disagreement between the assessment of landscape/amenity effects as discussed in the AEE and in the specialist report commissioned by the council. This is considered to be an area of potentially significant adverse effect and is discussed as follows:

The council has commissioned a landscape and visual impact assessment of the proposal by Specialist A. The full text of this assessment is appended to this report.

This report states that "the extent of visual effects, be they positive, negative or neutral, is determined by a number of factors including:

- the landscape character and quality into which the development is being placed
- the overall catchment from which the development is visible - the visual catchment
- the extent to which screening or other ameliorative techniques can reduce the visual impact
- the quality of the proposal itself, including the scale, colour, form, texture, etc"

The AEE also provides a visual landscape assessment prepared by Specialist B. This analysis divided the visual catchment into two zones: the primary and secondary zones. The proposal would have potentially significant effects in the primary zone because of the closer proximity. The potential effects in the secondary zone are significantly reduced because of distance and the impact of screening vegetation and topographical backdrops. Specialist B's report generally agrees with the determination of where the primary and secondary zones are located with some variation.

Specialist A's report states that the impact of the proposal in the primary zone would be moderate to significant in terms of visual effect on approximately 15 households. The most affected are at 1, 2, and 3 Smith Road. The recent removal of some pine trees adjacent to the proposed site would also increase the visual presence of the proposal.

The secondary zone would suffer less visual effect than the primary zone. However, towards the end of John Street there are properties on slopes with clear views of the subject site which would suffer a moderate visual impact.

Specialist A's report concludes that those affected by the proposal would be "local residents who have a sense of attachment with the local landscape and will interpret the proposal as an imposition conflicting with what they want or expect in their rural setting". This comment is supported by the submissions, which mirror this sentiment. Further, there is little opportunity to effectively mitigate the effects of the proposal in this location; trees planted for screening would take up to 20 years to be of a useful height and initially a group of new, small trees would draw the eye to the site.

The writer of this report concurs with Specialist A's report. The proposal would have a significant visual effect on properties in the immediate vicinity and would continue to have more than minor visual impact on sites up to one kilometre distance. Proposed screening measures would not effectively mitigate the visual impacts of the proposal for many years. The rows of pines, which until recently provided an effective backdrop, are not located on the subject site and therefore cannot be protected by way of conditions on any consent. As they are detailed as removal species in the District Plan they could be felled at any time, as evidenced by the recent removal of some of the trees.

It is considered that the proposal would adversely impact upon amenity values in the area. The proposal is considered to have an adverse visual impact and submitters state that the proposal is not in keeping with what is acceptable in this area. The RMA defines amenity values as those "natural and physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes..." The proposed activity would not be in keeping with the physical qualities which define this location and which residents enjoy. These include the open rural setting and a relative lack of man-made structures excluding dwellings and rural industry related buildings. There is no existing comparable structure to those proposed.

#### 4.0 Notification assessment

The application required public notification in accordance with the attached report (attach report as per step 4 in section 6.0 of this guide).

#### 5.0 Submissions

Twelve submissions were received. These are attached and summarised below:

name	address	summary of concern
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(A locality plan may be attached with the properties of those submitters close to the subject site marked on the plan.)

#### 6.0 Assessment of Part II matters

#### 7.0 Assessment of the objectives and policies of the regional policy statement and relevant plan(s)

#### 8.0 Conclusion/recommendations including, if consent is recommended, any conditions and monitoring

## Step 7 Assess against section 104 requirements

At this stage you are required to consider, along with other things, both the actual and potential effects of the proposal (section 104(1)(a)) and the provisions of the relevant policy statement and plans (section 104(1)(c)-(f)). The repeal and substitution of section 104 of the Act by section 54 of the Resource Management Amendment Act 1993 confirmed the priority of the purposes and principles of the RMA and made it clear that attention is to be directed to assessing effects<sup>37</sup>.

### Part II matters have primacy.

Part II matters apply to all resource consents<sup>38</sup>. The opening phrase “Subject to Part II” in section 104 of the RMA indicates that these matters are to be given priority. Councils have to “have regard to” the matters listed, including considering any actual and potential effects on the environment, unless doing so would conflict with something in Part II<sup>39</sup>.

While both the positive and negative effects of the proposal need to be considered in the decision-making process, the proposal should not be allowed to compromise Part II matters, unless it is required for promoting sustainable management.

#### Example: River Pollution

Consider the example of a polluted river, which continues to receive contaminated discharges. The community has no choice but to bring the river up to an acceptable standard, but the speed and stages by which that happens need to consider the fact that the polluter industry needs to adjust to stay economic.

This does not indicate that the community can tolerate the pollution for an environmentally unacceptable time. Rather, the relevant plan(s) should set the quality to be achieved within a certain period, say 20 years. It should also set the interim improvements, say five yearly, that must be met to ensure that progress is made and that socioeconomic impacts are managed.

If, however, the damage to the river is intolerable, even after reasonable mixing, and the river would “die”, then its life-supporting capacity (section (5)(2)(b)) is the priority. In that case, the polluter industry may face extreme costs to upgrade to the required standard or may even be forced to close.

<sup>37</sup> See *Wellington Regional Council (Bulk Water) v Wellington Regional Council* W3/98.

<sup>38</sup> See *Royal Forest and Bird Protection Society v Manawatu-Wanganui Regional Council* A89/94 4 NZPTD 41 (1995) NZRMA 110.

<sup>39</sup> *Paihia and District Citizens Association Inc v Northland Regional Council* A77/95 4 NZPTD 567.

### So what are Part II matters?

The Part II analysis must conclude that sustainable management of natural and physical resources is promoted.

Section 6 contains matters of national importance. These are generally environmental matters or objectives relating to the way people's relationships with, or access to, aspects of the environment should be maintained. The matters in section 6 (and section 7 for that matter) are not ends or objectives in themselves, but accessories to the main purpose of promoting sustainable management.

Section 7 lists "Other matters". Again these are matters which mostly relate to environmental values, including some that directly relate to physical resources, such as amenity and heritage values. The Act's terminology presumes that section 7 matters ("shall have particular regard to") are subsidiary to those in section 6 ("shall recognise and provide for").

Section 8 requires that decision-makers shall "take into account the principles of the Treaty of Waitangi". The duty to "take into account" has been recognised as different from the duty to "have regard to". If matters have been "taken into account" they must necessarily affect the discretion of the decision-maker (*Haddon v Auckland Regional Council* [1994] NZRMA 49). If matters have been "had regard to" decision-makers must give them particular consideration, but this consideration is not necessarily required to *affect* the decision-maker's discretion.

While the wording of section 6 implies a stronger duty than that of section 7, assigning priority to any individual consideration is a matter of discretion in each case. You must consider all of them in your day-to-day administration. Where there is a conflict of interest between the matters of national importance, or between the other matters to be considered, you must measure the significance of the conflicting interests in light of the facts of the particular case.

**Points to note about some of the provisions in sections 6 and 7:**

- Section 6(a) refers to “inappropriate” subdivision and development. The word “inappropriate” indicates that concern should focus on effects, and not on needs or desires. You should indicate in your regional policy statement and/or regional and district plans what is meant by “inappropriate”.
- Section 6(a) refers to “natural character”, while 6(d) refers to “public access”. The New Zealand Coastal Policy Statement makes some helpful references to these two phrases.
- “Outstanding” is used in section 6(b). This term has been discussed by the Environment Court in relation to the water conservation orders for the Rakaia, Ahuriri, Mohaka, Kawerau and Mataura Rivers. The meaning of outstanding may well be transferable.
- Section 6(c) refers to significant indigenous vegetation and significant **habitats** of indigenous fauna.
- References to “maintenance and enhancement” in sections 6(d), 7(c) and 7(i) do not require these to be achieved simultaneously, although you should give clear guidance as to which should be achieved in what circumstances. Additionally, maintenance and enhancement of public access in section 6(d) does not necessarily require such access to be formally developed - merely that such access is not constrained.
- In section 7(h), the reference to the habitat of trout and salmon should not be seen as protecting trout and salmon but as protecting the ecosystems in which they live. Trout and salmon are a good indicator of water quality, and as there is a lot of information about them it is easier to make national and international comparisons. This provision also covers habitats that are not protected by section 6(c).
- Section 7(a) refers to “kaitiakitanga”, section 7(c) refers to “amenity values” and section 7(d) refers to “intrinsic values”. All three terms are defined in section 2 of the RMA.

## Step 8 Determine the recommendation

**There is debate on how positive and adverse effects are to be considered in section 104(1)(a).**

Subsection (i) refers to the “actual and potential effects on the environment of allowing the activity”. There is some debate as to whether this requires both positive and negative effects to be considered. The Environment Court has indicated that unless all the effects - positive and negative - of a proposal are considered together, the decision on whether a consent should be granted or refused may be incomplete and distorted<sup>40</sup>. Cases such as *Telecom New Zealand Ltd v Christchurch City Council* W165/96 and *Baker Boys Ltd v Christchurch City Council* C060198 indicate that these can be balanced but not to the detriment of Part II matters and without sacrificing environmental bottom lines.

Any consideration undertaken according to section 104(1) is subject to Part II. Given this, if there is a concern that the proposal will compromise the matters in section 5(2)(a) (b) or (c), the adverse effects must be elevated above the positive effects in accordance with the directive “subject to Part II” that precedes section 104(1) . This view, however, relies on interpreting the word “while” in section 5(2) to mean that achieving principally social and economic objectives, and for that matter even health and safety objectives, should not be at the expense of sustaining or enhancing biophysical ecosystems - a view that is also the subject of debate.

**Section 104(1)(a) also has to be considered against a number of other matters.**

The matters in section 104 are deemed material considerations in the decision-making process but will not necessarily affect the discretion of the decision-maker. All matters are to be considered and given the weighting that you consider appropriate in each case. In *Price v Auckland City Council* W180/96, with reference to section 104, it was stated that:

*“...this section is expressed to be subject to Part II of the Act. There may be occasions when an application, although not complying with the rules, has a beneficial or benign effect upon its environment in which case a Council cannot arbitrarily reject it without examining whether it is in conformity with the general purposes of the legislation. The Act is effects based which gives any individual property owner a flexibility as to the way he (sic) uses his (sic) property which is not to be arbitrarily curtailed by inflexible adherence to the rules.”*

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<sup>40</sup> *Affco New Zealand Ltd v Far North DC A6/94 NZPTD 289 and Te Aroha Air Quality Protection Appeal Group v Waikato DC A56/93 1&2 NZPTD 725 (1993) 2 NZRMA 572.*

With reference to section 104 considerations, the Court had this to say in *Wilbow Corporation NZ Ltd v North Shore CC* W107/95:

*"In considering what is adverse and what is not, it is not permissible in our view to elevate one criteria (sic) such as the existence of a pleasant area of undisturbed trees and scrub above other criteria such as the zoning policy of the local authority. The two must be considered and weighed together in deciding whether or not the particular effect is adverse."*

**The AEE's relevance versus the provisions of a proposed plan could depend on how much the plan has been the subject of public debate.**

The stage that the objectives and policies of a proposed plan have reached will be important in determining the importance placed on them in considering section 104 matters. The relevance of the provisions of a proposed plan should be considered on a case-by-case basis. The High Court has given the following guidelines:

- i. the extent (if any) to which the proposed measure might have been exposed to testing and independent decision-making
- ii. circumstances of injustice
- iii. the extent to which a new measure, or the absence of one, might implement a coherent pattern of objectives and policies in a plan<sup>41</sup>
- iv. the stage of the proposed plan compared to the transitional plan
- v. the drafting of provisions - on numerous occasions the Court has refused to give weight to objectives and policies that are ambiguous.

**In considering the matters of the AEE and the plan, consider the generality of the plan versus the application's site and locality-specific analysis.**

The assumptions in the plan need to be understood before deciding on the proposal's effect on the plan. For example, if the plan anticipates that "any change is adverse" this needs to be carefully understood. This should not necessarily mean the AEE is inaccurate or wrong, or needs further assessment - merely that there is a difference of opinion. The opinions of the applicant or their advisers might be quite correct in the site's circumstances, and the plan provisions may be inappropriate. This should be acknowledged in the section 104 analysis.

<sup>41</sup> See at page 14, *Burton v Auckland CC* M 1973/93, HC Auckland, 5/7/94, J Blanchard (1994) 12 NZRMA 544.

## Step 9 Determine whether consent should be granted

Section 105 directs whether consent can be granted or not.

### Controlled Activities

Consent must be granted for a controlled activity. This may be subject to conditions imposed in accordance with the matters over which the council has retained its control.

### Discretionary Activities

Consent may be granted or refused for a discretionary activity, in accordance with the section 104 assessment, and conditions may be imposed. In the case of a restricted discretionary application, conditions may only be attached in relation to matters over which the council has limited the exercise of its discretion.

### Non-Complying Activities

Section 105(2)(a) of the RMA provides that for a non-complying activity, notwithstanding any decision made under section 94(2)(a), a consent authority shall not grant consent unless it is satisfied that:

- (a) *The adverse effects on the environment (other than any effect to which section 104(6) applies) will be minor; or*
- (b) *The application is for an activity which will not be contrary to the objectives and policies of,-*
  - (i) *Where there is only a relevant plan, the relevant plan; or*
  - (ii) *Where there is only a relevant proposed plan, the relevant proposed plan; or*
  - (iii) *Where there is a relevant plan and a relevant proposed plan, either the relevant plan and a relevant proposed plan.*

The wording of section 105(2)(a) does not intend there to be no adverse effect nor that any effects are minimal.<sup>42</sup> Minor is less than major but could be more than simply minute or slight. Adverse effects could also be made minor by using conditions.<sup>43</sup> Again, confidence in the certainty and stability of plan provisions is not recognised as an adverse effect on the environment under this proviso.

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<sup>42</sup> See *Bethwaite v Christchurch City Council* C85/93 3 NZPTD 87.

<sup>43</sup> See *Elderslie Park Ltd & South Mall Holdings v Timaru District Council & Countdown Properties Northlands Ltd* CP 10/94, #4 NZPTD 168 (HC), (1995) NZRMA 433 (HC).

## Step 10 Determine if any conditions need to be attached to the consent<sup>44</sup>

Reasons for granting or declining an application should be stated in full.

Conditions, including monitoring, should be recommended where, after analysing the AEE and the application as a whole, effects that need to be avoided, remedied or mitigated have been identified. Recommended conditions should be discussed with the applicant first. If agreed to, a decision may then be able to be made under delegated authority.

### Conditions should not be instrumental to the consent's operation.

Conditions should not be imposed if they are instrumental to whether the consent should be granted. In this case, the application should be modified before consent is granted. This is because, where an appeal relates only to specific conditions, the Court has no power to refuse consent and can only rule on the appropriateness of the conditions or the amended condition sought by the appeal<sup>45</sup>.

### Conditions need to be legally valid.

There are a number of important things to remember when drafting conditions<sup>46</sup>:

- Conditions must be lawful. They must be for a resource management purpose, not an ulterior one, and may not broaden the scope of the consent.
- Conditions must be drafted so that they can be monitored and enforced. They should explain monitoring methods and accreditation required for those carrying them out, and be detailed enough to include sampling times, frequency, etc.
- If provided for in a consent, you can review the conditions of consent, including the addition of conditions. However, you generally cannot add new conditions onto a consent at a later time or impose a condition that seeks to revoke a consent at any time. The exception to this is where the RMA provides for plans to add certain types of conditions to existing consents, for example where these relate to flows and discharge standards.
- Conditions must fairly and reasonably relate to the development authorised by the consent. If you have a number of predetermined conditions that apply to a range of consents, they should be checked for relevance before being included. If you are seeking to limit the term of the consent there should be an effects-based reason for doing so.
- Conditions must not be so unreasonable that no reasonable planning authority duly appreciating its statutory duties could have approved them.
- Conditions may require further information (for example, a management plan), but you may not retain a discretion to approve a plan at a later date.

<sup>44</sup> The following is a brief overview text only. The New Zealand Planning Institute has run a number of seminars on drafting consent conditions. Attendance at these seminars and reference to the written handouts are recommended.

<sup>45</sup> *Brown RW v Central Otago District Council* C56/97, 2 NZED 430.

<sup>46</sup> See *Application for declaration by Christchurch International Airport Ltd* C113/94 4 NZPTD 81.

### Conditions can be reviewed if a condition says so.

A review condition is an effective and efficient way of providing a consent holder with a consent term that provides certainty, while allowing your council the flexibility to review the exercise of consent and address any significant adverse effects.<sup>47</sup>

Section 128 of the RMA specifies three broad grounds on which a consent authority may review the conditions of consent:

1. The most common basis for review will be either in a consent (section 128(a)) or through the operation of regional rules (section 128(b)). Section 128(c) provides for a review if an application contains material inaccuracies.
2. A review can be made under section 128(1)(a) on the basis of any adverse effects happening. However, the consent itself must specify the time for review. Any such condition must still be legally valid. A condition stating that the consent is subject to review “at any time that the Council considers appropriate” is inadequate<sup>48</sup>. Applicants have a legitimate requirement for certainty, so review conditions should only be used where the actual adverse effect in question cannot be foreseen, although the type of effect can be specified with some certainty. It should not be used to materially alter the consent's nature.
3. The consent can specify a number of times for review of conditions. If conditions relating to the change of the regional plan are to be attached to a consent, that plan should have:
  - included rules relating to the matters in section 128(1)(b)
  - stated that the rules affect the exercise of existing resource consents for activities that contravene the rule<sup>50</sup>.

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<sup>47</sup> From a paper by Bill Bayfield, Director of Resource Management, Taranaki Regional Council, at a seminar entitled “How to Write Effective and Enforceable Consent Conditions”, Auckland Branch NZPI, 17 June 1997.

<sup>48</sup> See *Huffman v Queenstown Lakes District Council*, A145/92 1&2 NZPTD 402.

<sup>49</sup> See section 68(7) and section 130(5)-(7).

## Step 11 Determine whether monitoring is required

### **The conditions can include provisions for monitoring.**

The AEE should also help in determining the length of consent (where applicable) and whether any effects need to be monitored.

### **The purpose of the monitoring should be clear.**

How much monitoring or review of conditions is required should reflect the level of risk of adverse effect. Before monitoring is imposed, you should establish what use the data will have. Data collection is useless unless it is linked to providing a specific result. The amount of information supplied with the application and any modelling and testing provided as part of the AEE should affect the length and frequency of monitoring and the length of consent or any review period.

Monitoring of effects should be incorporated into the plan provisions over time, as the status of activities and the conditions on permitted activities are reviewed. To this extent, your policy on cost recovery for monitoring should reflect its purpose, and apportion costs according to the private and public benefit that will result.

### **Monitoring conditions should relate to the exercise of the consent.**

You are required to undertake state of the environment monitoring, so resource consents should not be used to gather baseline data. For example, before imposing monitoring conditions on the way consents operate, you should consider whether the building inspector's final clearance will confirm that the proposal has been carried out according to the consent.

### **Clearly state when and for what purpose conditions are to be reviewed.**

Best practical option (BPO) is a short-term measure that should be supplemented by more precise conditions with further monitoring and strategy development. This is particularly true where BPO is applied to resource consents or as a condition for a permitted activity. With resource consents it may be appropriate to include review periods or to grant only short-term consents.

*The application and audit report should now be sent to the decision-maker.*





So, the decision has been made.  
Is it all over now?



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## 7.0 So, the decision has been made. Is it all over now?

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It's not all over until the feedback loop is complete. Without this part of the process:

- there will be little guidance on whether practice has improved or further improvements are required
- the audit function is likely to be compromised by accepting and processing applications with inadequate AEEs
- instead of complementing each other, the preparation and auditing of AEEs will merge.

In particular, one of the key ways to make the resource management process cost effective is to have as much relevant information included in policy statements and plans as possible.

### Feedback can happen through a number of channels

#### 1. Feedback into the resource consent process within council:

- Can any deficiencies be identified in the processing and evaluation stages of the consent application?  
*Who are these reported to and how?*
- Is there a need to revisit the standards of application accepted by your council?  
*Have the counter staff been included in such discussions?*
- Were there any deficiencies in the AEE and how it was prepared or presented?  
*Has the preparer been alerted to these problems?*

#### 2. Feedback to key parties making applications:

If matters are being raised that are consistently poorly handled or that need wider discussion, hold regular meetings and liaise with key parties<sup>50</sup>.

#### 3. Feedback to political process:

- How did the decision-making process respond? Are the appropriate delegations being made?
- If the decision is made at a political level, do the committee members have a thorough understanding of the resource management process?
- Are staff adequately resourced?  
*What processes are there for feedback into the political process?*

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<sup>50</sup> Refer back to step 1 in section 3 of this guideline.

#### 4. Feedback to the regional or district plan process:

- Has the application identified any deficiencies in the plan<sup>51</sup>?
- Are the issues and information requirements accurately identified?
- Is the relationship between the objectives, policies and rules clear?
- Are any rules not achieving the desired result?
- Is there a need for additional or changed rules? In particular, for cumulative effects assessment, is there a need to change any of the rules in the plan?
- Does the plan refer to types of applications as being notified that should be non-notified (or vice versa)?
- Are the appropriate information requirements identified?  
*Are there in-house procedures for reporting back suggestions to the regional or district plan policy team?*

#### A good plan should:

- be easy to follow
- dictate the conditions that need to be satisfied before an activity can be permitted and the other activities that require a resource consent
- clearly identify and articulate the resource management issues for a region or district
- through its objectives, policies, methods and statements, provide specific guidance to the council, the community and applicants on how resource management issues may be addressed
- incorporate basic explanations of the reasons for such provisions and clearly identify any assumptions and interpretations
- contain rules that are clear and certain in their application. It should be clear why a rule has been imposed
- contain comprehensive assessments of information requirements for resource consent. These need to be clear and consistent and linked to relevant policies and/or assessment criteria and rules. It should be clear that if the appropriate information is not provided the application for resource consent will not be accepted for processing by the council

<sup>51</sup> You could ask yourself, can people use and develop resources efficiently without having to go through unnecessary processes to obtain approvals? Are hurdles put in the way which do not enable people to provide for their social, cultural and economic wellbeing and do nothing to promote the sustainable management of natural and physical resources?

- outline the circumstances in which specialist reports may be obtained - for example, where a review of technical, operational or scientific details is required, where information on natural hazards or hazardous substances is required, where it is not clear what assumptions have been made in reporting on the application, where sensitive off-site environments require consideration, where weather patterns and conditions may have an impact on the effects analysis, etc
- in its anticipated environmental results, give a clear indication of the desired results and the reasons why monitoring requirements may be imposed
- as a public document, give guidance as to who may be deemed to be an “affected party” and in which circumstances an application may be considered a notified or non-notified consent.
- not be inconsistent with those of other relevant authorities. Overlaps in plans need to be clear and justifiable.





## Appendices



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## Appendix 1: Key Assumptions

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### From the applicant's perspective:

#### Assumptions made through experience:

- that their efforts will be doubted throughout processing because they are making an application and are "breaking the rules"
- that because the counter planner is not the decision-maker, their advice cannot be relied upon and may be inconsistent with the views and requirements of the processing planner
- that the council will take a lot longer than 20 working days to process the application
- that the council will duplicate the AEE anyway, so there is little point in preparing a comprehensive AEE only to have to pay for the council's AEE as well
- that in some applications, especially those bringing major economic benefit to the district, the political process is more important than the RMA process.

#### This leads to practices that:

- encourage people to lodge applications regardless of the level of AEE (ie, half an application), putting the onus on the council to determine the level of acceptability or alternatively complete the application requirements for the applicant
- can be motivated as much by ad hoc politics as by sound resource management practice
- blame the council for the deficiencies in their work
- lead to an escalation of costs.

### From the council's perspective:

#### Assumptions made through experience:

- that the AEE has been prepared with an inherent bias
- that negative effects will have been omitted
- that negative consultation is not recorded
- that the AEE will not reflect the effects/issues identified within the community
- that professional advice, because it is obtained by the applicant, may be inherently biased.

**This leads to practice that:**

- means councils may accept applications for processing that are information deficient. Councils are then compromised into preparing or reassessing an application rather than auditing it
- involves multiple handing of applications, which can incur significant additional costs and time delays
- favours people who have a proven track record
- fails to encourage the preparer to have done some homework before approaching the council
- requires the council to invest its more experienced staff in processing rather than in information
- has led to complex reporting formats and a lack of delegated authority
- undermines submitters' confidence in the council's neutrality.

## Appendix 2: Example of a Targeted Checklist:

Rule not complied with in the plan: Rule 13.2.1 Side Yard (restricted discretionary)	
Effects to consider:	Comments:
Lack of separation between buildings and open space around buildings in relation to both the site and neighbourhood.	
Impact on adjacent site with regard to: <ul style="list-style-type: none"> <li>• daylight/sunlight admission</li> <li>• intrusion into privacy</li> <li>• physical domination</li> <li>• obstruction of outlook.</li> </ul>	
The character of the streetscape is protected.	
The safety of pedestrians and road users is protected.	
Confirm neighbours' consent obtained:	
Does the plan indicate any wider effects on the community?	



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## **Acknowledgements**

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“Auditing Assessments of Environmental Effects” was initially prepared for the Ministry for the Environment by Karen Blair of Burton Consultants Limited. Various local authority staff, consultants and other AEE experts provided comments during the drafting process.

