



Ministry for the
Environment
Manatū Mo Te Taiao

AN EVERYDAY GUIDE TO THE RMA → SERIES 1.2

Resolving Resource Management Act Concerns



Series Overview

»

1

- 1.1 Getting in on the Act
- 1.2 **Resolving Resource Management Act Concerns**
- 1.3 Enforcement
- 1.4 National Level Guidance and Processes

2

- 2.1 Applying for a Resource Consent
- 2.2 Consultation for Resource Consent Applicants

3

- 3.1 Your Rights as an 'Affected Person'
- 3.2 Making a Submission about a Resource Consent Application
- 3.3 Appearing at a Council Resource Consent Hearing

4

- 4.1 The Designation Process

5

- 5.1 Making a Submission about a Proposed Plan or Plan Change
- 5.2 Appearing at a Council Plan or Plan Change Hearing

6

- 6.1 Your Guide to the Environment Court
- 6.2 You, Mediation and the Environment Court
- 6.3 The Environment Court: Awarding and Securing Costs

Contents

Introduction	1
Who should you see first?	1
Your local council	1
Who else can you go to?	4
Local providers of RMA advice	4
The Courts	4
Office of the Ombudsmen	6
Office of the Controller and Auditor-General	7
Parliamentary Commissioner for the Environment	8
Ministry for the Environment	9
Environmental Protection Authority	9
Minister for the Environment	9
Minister and Department of Conservation	10
Members of Parliament	11

Introduction

The Resource Management Act 1991 (RMA) is the main law protecting our environment. It's designed to ensure activities like building houses, clearing bush, moving earth, taking water from a stream or burning rubbish won't harm our neighbours and our communities, or damage the air, water, soil and ecosystems that we and future generations need to survive.

The RMA allows you to participate in decisions that affect you. However, if you are unhappy with a decision made under the RMA, there are several agencies you can approach for help. This guide explains their different roles and responsibilities, and gives information on which agencies to approach about a range of concerns.

Who should you see first?

If you've seen something happening that you think is bad for the environment, such as someone burning harmful waste or cutting down a stand of native trees, then you should first approach the person who's actually doing it. They might have approval from the council for what they're doing or have some other explanation. However, if you're not happy with the answer they give, then your local council should be your next port of call.

Your local council

If you think something has been done or is about to be done that will affect your property or the environment, or you disagree with the way your council is handling a resource issue in your area, get in touch with your council. There are currently 12 regional councils, 68 city or district councils, and five unitary authorities (each doing the job of both a regional and city council).

The RMA gives city, district and regional councils the power to make environmental decisions.

In most cases, the local council decides who's allowed to do what and whether a proposed activity is likely to affect neighbours, the community and the environment. Councils base their management decisions about the resources in their area on the RMA, regulations made under the RMA, policy statements, and district and regional plans. They must consult with their communities

RESOLVING RESOURCE MANAGEMENT ACT CONCERNS



when developing plans and policy statements and this is a good time for you to have a say on what you want for your community.

In some complex cases, a board of inquiry or the Environment Court may make resource management decisions instead of a local council. If you're dealing with a project that's been referred to the Environment Court or a board of inquiry, you might need more technical advice from the Environmental Protection Authority (**EPA**) – an office within the Ministry for the Environment that deals with proposals of national significance (www.epa.govt.nz). You can also refer to 'An Everyday Guide to the RMA' booklet *1.4 National Level Guidance and Processes*.

District and city councils are generally responsible for making decisions about:

- » the effects of land use
- » the effects of activities on the surface of rivers and lakes
- » noise
- » subdivision.

Regional councils are generally responsible for making decisions about:

- » discharges of contaminants to land, air or water
- » water quality and quantity
- » the coastal marine area
- » soil conservation
- » land use to avoid natural hazards.

Councils can make people comply with the RMA, national environmental standards and their own plans. They can do this by issuing infringement notices, abatement notices and excessive noise directions to people who are not meeting consent conditions or are carrying out an activity that needs a resource consent without one.

Anyone, including the council, can seek an enforcement order from the Environment Court if they think the RMA, a resource consent, a provision in a plan, or a designation is not being met. You should consult a lawyer before seeking an enforcement order.

If you are not happy with how council staff or management have addressed your concern, you can take the matter up with the chief executive officer or an elected representative (councillor or community board member).

To find out details about your local council, visit the Local Government New Zealand website (www.lgnz.co.nz) or Local Government Online (www.localgovt.co.nz).

Who else can you go to?

If you have tried to resolve your concern with the council, but are not satisfied, there are a other people, organisations or agencies you can approach. Each has a different role and responsibilities, which are summarised in this section. More information about the various agencies can be found in the Ministry for the Environment publication, *Your Guide to the Resource Management Act* or the other booklets in 'An Everyday Guide to the RMA' series.

Local providers of RMA advice

Providers in your local community who can give advice include:

- » the citizens advice bureau
- » environment and legal centres
- » legal advisers
- » resource management consultants.

Check your local community directory or the Yellow Pages to find out how to contact them.

The Courts

The Environment Court is the main judicial decision-making body under the RMA, and is at the same level as the District Court. The Environment Court hears appeals from people who disagree with RMA-related decisions made by local councils. The Court can enforce a council's decision on a person, company or organisation, or it can overturn it.

You can ask the Court to overturn any council decision to do with a plan or resource consent application – but only if you made a submission in the first

RESOLVING RESOURCE MANAGEMENT ACT CONCERNS



place, or you have become a party to an appeal started by another submitter. You may also appear before the Court to support someone who has filed an appeal. You might be able to have your case sorted out through mediation and avoid a court hearing altogether. In any case, you should get legal advice before you file an appeal.

For more information see 'An Everyday Guide to the RMA' booklets *6.1 Your Guide to the Environment Court* and *6.2 You, Mediation and the Environment Court*.

There are other circumstances where you may want to approach the Environment Court:

- » You can apply to the court for an enforcement order to stop someone doing something that may be affecting the environment. Enforcement orders work best for ongoing rather than urgent problems. The Court can quickly issue an interim enforcement order so that the environment is protected while it considers a full enforcement order.
- » You can lodge an appeal if you disagree with an abatement notice that you have been issued with by a council.
- » You can apply for a declaration which clarifies uncertainties in the interpretation of RMA, if the law is uncertain on a particular matter. Your lawyer can advise you on whether this is necessary.

To find out how to contact the Environment Court, visit their website: www.courts.govt.nz

District Courts deal with RMA prosecutions. Councils or individuals can prosecute parties who fail to comply with the RMA, for example by discharging contaminants illegally. The District Court also deals with unpaid or challenged infringement notices. To find out more about the District Court, visit their website: www.courts.govt.nz

If you disagree with a decision from the Environment Court or District Court, then you can appeal it to the High Court. Any appeal to the High Court can only be on points of law; you cannot ask for a re-hearing of everything heard by the Environment Court when it made its decision.

Judicial review

You can also apply to the High Court for a review if you disagree with the way in which a local council has conducted a RMA process. This is usually referred to as a judicial review, and involves a judge of the High Court reviewing the original decision to see if it was made according to law, followed proper procedure, and was fair and reasonable.

Judicial review is not the same as an appeal. Judicial review is an enquiry into the **process** of making a decision, rather than the merits of the decision itself. The grounds for judicial review include a council making mistakes of law, taking into account irrelevant considerations (or failing to consider relevant matters), or having insufficient information to reach a certain decision.

You can seek a judicial review of a council's decision-making process only if it's not possible appeal under the RMA. For example, a judicial review might be sought when a council decides to process a resource consent on a non-notified basis but someone believes they should have been notified and involved in the process.

Making an application for judicial review can be expensive. If you are unsuccessful, it is likely that costs will be awarded against you.

You can find out more information about the High Court at: www.justice.govt.nz/courts/high-court

Office of the Ombudsmen

The Office of the Ombudsmen is independent of any other government agency and reports to Parliament. The Office investigates complaints about processes run by central, regional and local government organisations or agencies. It can look into any decision made by a government agency that affects an individual personally. It also decides whether a Minister of the Crown, or central, local or regional government, should have to release information that someone has asked for.

The Office doesn't investigate decisions made by Ministers of the Crown or local bodies as a whole, although it can look into any advice they have been given. The Office can't investigate matters that are subject to legal action, such as appeals before the Environment Court.

RESOLVING RESOURCE MANAGEMENT ACT CONCERNS



The Office of the Ombudsmen will usually investigate a complaint only after you've tried to resolve it with the organisation concerned. The Office will look at whether the matter you are concerned about:

- » appears to have been contrary to law
- » was unreasonable, unjust, oppressive or improperly discriminatory
- » was in accordance with a rule of law or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory
- » was based on a mistake of law or fact
- » was wrong.

The Office of the Ombudsmen usually resolves issues informally. But if it believes someone's complaint is well founded, it can recommend a local council put things right. Local councils don't have to accept these recommendations, but usually do.

You can find out more about the Office of the Ombudsmen at:
www.ombudsmen.govt.nz/

Office of the Controller and Auditor-General

The Office of the Controller and Auditor-General is independent of any other government agency and reports to Parliament. The Office ensures that government departments and ministries, state-owned enterprises, local councils and other public bodies are doing their jobs properly and according to the laws they work under.

The Office can investigate how local councils spend public money. This includes keeping an eye on how they apply the RMA in their areas, and their processes and procedures. The Office cannot investigate local council policies.

The Office of the Controller and Auditor-General will sometimes follow up inquiries from members of the public about how a public body has used its resources. As well as financial issues, this also includes accountability, performance, governance and behaviour. For example, the Office of the Controller and Auditor-General can investigate how a council has delegated its decision-making powers (as allowed under the RMA) to council officers. They may report to Parliament or any other

person following an investigation. The Office can make recommendations but can't compel organisations to accept them.

To find out more about the Office of the Controller and Auditor-General, visit their website at: www.oag.govt.nz/

Parliamentary Commissioner for the Environment

The Parliamentary Commissioner for the Environment is also independent of other government agencies and reports to Parliament. The Commissioner's primary objective is to contribute to maintaining and improving the quality of the environment in New Zealand. This is achieved through giving information and advice to Parliament, councils, businesses, tāngata whenua, communities and other public agencies.

You can contact the Commissioner if you have a complaint or are concerned about how a council or other body is managing the environment or their planning processes. The Commissioner may provide advice or decide to investigate your concerns in more detail, depending on their significance and on the Commissioner's current strategic direction.

The Commissioner can investigate and report on any matter where the environment may be, or has been, adversely affected. The Commissioner has wide powers to obtain information, and also to protect the confidentiality of information where appropriate. The Commissioner can report findings and make recommendations, but cannot make binding rulings nor reverse decisions made by public authorities.

To find out more, visit the Parliamentary Commissioner for the Environment's website at: www.pce.parliament.nz/home



Ministry for the Environment

The Ministry for the Environment advises the government on the environment and anything that might affect it. It is responsible for administering the RMA, drawing up environmental guidelines, developing national policy statements and national environmental standards, and working on any environmental problems that can't be fixed locally.

The Ministry helps the Minister for the Environment carry out their statutory powers under the RMA.

While the Ministry can listen to and look into complaints on local issues, it can't reverse local council decisions or handle objections. The Ministry can only write to a local council about the complaint.

To find out more about the Ministry for the Environment, visit www.mfe.govt.nz

The Ministry provides information on the RMA on the website www.rma.govt.nz

Environmental Protection Agency

The Environmental Protection Authority (EPA) is a statutory office within the Ministry for the Environment involved in processing proposals/applications for nationally significant projects. EPA staff can help if you have any queries or concerns about the processing of those applications it is managing. To find out more about the EPA, visit www.epa.govt.nz

Minister for the Environment

The Minister for the Environment is an elected politician responsible for ensuring the Ministry for the Environment carries out government policy. Under the RMA, the Minister can require information from councils about their functions, powers or duties under the Act. The Minister can also investigate the performance of councils (as it relates to their functions, powers or duties under the RMA) and recommend that they take action.

If a council doesn't follow the Minister's recommendations, or can't adequately explain why it has decided not to take the recommended

action, then the Minister can appoint somebody else to carry out the actions instead of the council. It is likely that the Minister would only exercise this power if there were wider concerns about the performance of a council, not just a single complaint.

The Minister for the Environment is also able to direct a regional or local council to review a plan (except a regional coastal plan), prepare a plan, change a plan, or prepare a variation to a plan to address a resource management issue relating to a council's functions under the RMA.

The Minister for the Environment can 'call in' a proposal of national significance and refer it to either the Environment Court or a board of inquiry for a decision. The Minister can do this in response to a request, in response to an application to the EPA, or under their own initiative. For more information about 'call in' see booklet *1.4 National Level Guidance and Processes*.

You can contact the Minister for the Environment if you think an application for resource consent is of national significance or that a local council is not performing as it should under the RMA.

Contact details for the current Minister for the Environment can be found at www.beehive.govt.nz

Minister and Department of Conservation

Under the RMA, the Minister of Conservation has particular responsibilities for the coastal environment. These responsibilities include preparing and adopting the New Zealand Coastal Policy Statement, approving regional coastal plans, and monitoring permits and plans that affect the coastal environment. The Department of Conservation, in its role as a conservation advocate, can also take part in proceedings under the RMA.

You can contact the Minister of Conservation if you disagree with the New Zealand Coastal Policy Statement or how the regional coastal plan or coastal permits are administered in your area.

Contact details for the current Minister of Conservation can be found at www.beehive.govt.nz

To find out more about the Department of Conservation visit www.doc.govt.nz



Members of Parliament

MPs know how government departments operate and can advise you. They might also be able to help in other ways, such as agreeing to act on your behalf in dealing with a government department or local body. And while most bills that MPs introduce into Parliament are to implement government policy, MPs will sometimes respond to requests from their constituents to introduce a private bill and sponsor it through the House. To find out more about Members of Parliament, visit: www.parliament.nz/en-NZ/MPP/MPs/





Ministry for the
Environment
Manatū Mō Te Taiao

Disclaimer

Although every effort has been made to ensure that this guide is as accurate as possible, the Ministry for the Environment will not be held responsible for any action arising out of its use. Direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

Second edition published in December 2009 by the
Ministry for the Environment
Manatū Mō Te Taiao
PO Box 10362, Wellington, New Zealand

ISBN: 978-0-478-33205-6 (print)
978-0-478-33206-3 (electronic)
Publication number: ME 956

For more information on the Resource Management Act:

↳ www.rma.govt.nz

↳ 0800 RMA INFO
(0800 762 4636)



For more information on the Resource Management Act:

↳ www.rma.govt.nz

↳ 0800 RMA INFO
(0800 762 4636)