

Environmental Legal Assistance Fund (ELA Fund)

INFORMATION GUIDE FOR APPLICANTS

This guide is designed to help you determine whether your group is eligible for funding and to help you answer the questions in the ELA Fund Application Form.

Introduction

The ELA Fund provides not-for-profit groups with financial assistance to advocate for an environmental issue of high public interest in resource management cases at the Environment Court, higher courts, and at boards of inquiry constituted under the "call-in" provisions of section 141B.1 (a) of the Resource Management Act 1991. Not-for-profit groups may include environmental, community, iwi and hapu groups. It is generally expected that groups are incorporated or a Trust. The ELA Fund is not available to individuals.

The ELA Fund reimburses the costs of legal counsel and expert witnesses including for preparation, mediation, and presentation of the group's case at the court or board of inquiry hearing.

An independent Advisory Panel assesses applications against the criteria and makes recommendations to the Chief Executive's Office of the Ministry for the Environment (the Ministry).

Successful groups are required to enter into a Deed of Funding with the Ministry. Please refer to our website to view a copy of a [draft Deed](#).

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Confidentiality

Information presented to the Minister for the Environment or the Ministry for the Environment is subject to disclosure under the Official Information Act 1982 (OIA). Therefore information provided in an application may be released upon request. Certain information may be withheld in accordance with the grounds for withholding information under the OIA. Further information on the OIA is available at www.ombudsmen.parliament.nz.

Overarching statement

The Fund provides financial assistance to not-for-profit groups, who collaboratively wish to advocate for an environmental issue of high public interest in resource management cases being considered by the Environment Court, higher courts, or by a board of inquiry.

Assistance will be provided to allow for the presentation of good quality, focused information, including technical evidence, to ensure that decision making processes are effective, efficient and suitably informed. Overall we aim to ensure that resource management practices are conducted in a way that efficiently and effectively protects the environment from harm, while taking into account a balanced and timely consideration of environmental aspects within the wider context of public good.

The assessment criteria

To decide whether funding should be recommended, applications are assessed by the Advisory Panel against Primary Criteria and other matters for consideration. Not all applications are recommended for funding. In some cases, only part funding is recommended.

Primary criteria

- The focus of the case is the protection or enhancement of nationally or regionally important environmental qualities. Relevant considerations include: Resource Management Act Part II considerations, and the potential for useful case law, and
- The case affects the wider community or general public. Relevant considerations include: may improve the administration and efficiency of the Resource Management Act, the status of the activity in the statutory plans, maintaining the integrity of a statutory plan, impacts on the wider community or general public, public/private interest balance, and the significance of the environmental issues, and
- Whether the case involves issues of national importance which will not be addressed in full before the Environment Court or a board of inquiry without the expert evidence provided by the group, and:
- The degree of collaboration, the commitment of the group and the resources it can offer to support its case, including:
 - What strength of contribution has been made by the group, having regard to the position of the group, the pro bono contribution from lawyers and/or experts and its efforts to raise funds. A strong weighting will be given to those groups that have made a significant contribution.
 - Whether the contribution sought from the fund is proportionate to the total cost of the case, and
- The group has shown that financial assistance is required as there is likely to be an imbalance between the level or quality of evidence and case management due to a lack of financial resources.

Other matters for consideration

- The group's ability to manage the case including any previous experience in legal cases.
- The prospects of success for the case.
- Whether the case is unreasonable or undesirable.
- Whether the case will set a legal precedent.
- Whether the group and/or its members has a private interest in the outcome.
- Any overlap with other parties' cases.
- Whether the group is open to mediation.
- Whether the case relates to policy and planning instruments.
- Whether the case relates to a Board of Inquiry or a direct referral to the Environment Court.
- Any other matters arising out of the application.

These criteria are applied to the outcomes that the applicant group is seeking to achieve in its case, not to the whole legal proceeding.

Please note that applicant groups that are predominantly made up of people who have a pecuniary interest in the case and would benefit materially from a decision in their favour, will only have funding provided if their case raises matters of high public interest, usually of precedent-setting value.

The ELA Fund has limited financial resources and priority will be given to cases of at least regional importance.

How much is available?

A maximum available is \$40,000 plus GST per application.

The ELA Fund has a total annual budget of \$800,000 (ex GST).

Eligibility Criteria

The ELA Fund eligibility criteria must be met before an application for funding is submitted to the Ministry. Only complete and eligible applications will be forwarded to the Advisory Panel for assessment. Note that meeting the eligibility criteria does not guarantee that your project will be funded.

1. Applicant must be a not-for-profit group.

Eligible groups include:

- incorporated societies and trusts
- iwi and hapu groups or other Maori groups
- unincorporated groups.

It is generally expected that groups are incorporated or a Trust. Please note that the Fund is not available to individuals.

2. **The group must be party to a proceeding that is eligible for funding – ie resource management cases being considered by the Environment Court, higher courts, or by a board of inquiry.**

Before a group can apply to the ELA Fund it has to already be engaged in the proceedings in one of the following ways:

Proceeding	Level of engagement required
Proceedings at the Environment Court or higher courts	Be a party to the case before the court
When the Minister for the Environment has directed a matter to a board of inquiry or the Environment Court if it is a proposal of national significance	Have lodged a submission with the Environmental Protection Authority
When a local authority has directly referred an application to the Environment Court	Have made a submission to the local authority

The group that applies for funding must be a party to proceedings before the court. Note that where individuals are registered as parties to proceedings, even where they purport to act "on behalf of" or "for" or as a group, they will not be considered for funding.

Groups who have already received funding for the Environment Court case, and who are seeking to defend the decision of that Court, have the greatest likelihood of receiving funding. Applications for cases to the High Court and the Court of Appeal require a new application to be submitted.

3. **The group's legal status must be verified by providing the required supporting documentation.** In general it is expected that groups are incorporated or a Trust.

If your group is a legal entity: Many legal bodies are registered with the Ministry of Economic Development as either a trust or an incorporated society and will have an identifying registration number (see www.societies.govt.nz). Please attach a copy of your Certificate of Incorporation and your group's mandate/rules.

If your group is not a legal entity: You must:

- provide recognition from the court that your group is a party before the court in the proceedings, and
- document the membership of the group and provide proof of the members and history of the group, and
- have more than one individual who has authority to sign documents on behalf of the group, including the ELA Fund Application Form, and
- include a mandate from the group granting those members authority to sign, and
- provide information that the group has structures in place to act as a group, i.e. evidence of regular meetings, bank account information.

As a non-incorporated group, you should be aware that incorporated groups can be protected from having to personally pay any award of costs against the group.

Iwi/hapu groups and other Maori groups

If you are an iwi, hapu or Maori group and you are not an incorporated group or a trust, please include the same information as required for a group which is not a legal entity.

4. The group must submit a complete application and all required supporting documentation as specified in the ELA Fund Application Form.

What the Fund covers

Funding is available to cover the time and expenses of legal representatives and/or expert witnesses used in preparing for, resolving and/or presenting cases before the court. As part of your application you must include a short resume about your legal representatives and expert witnesses which outlines their relevant qualifications and experience, including the resource management experience of your legal counsel.

There is no guarantee that any or all requested funding will be awarded. The applicant must be eligible for funding, and only reasonable costs will be considered for funding. Please note that where insufficient information is provided a request will be made for additional information. The Advisory Panel will not be asked to assess your application until all the required information has been provided.

What the Fund does not cover

Funding is *not* available for:

- assistance at council hearings
- costs incurred prior to the application being lodged
- the costs of members of applicant groups in any event
- the sundry costs of non-incorporated groups
- the costs of establishing the group as a legal entity
- the ongoing costs of the group, such as capital costs and rent
- costs awarded by the court against a group or individuals of the group
- the costs of preparing submissions to the Minister for board of inquiry hearings under the Call-in process. This is a prior stage to the board of inquiry hearing.

Funding maximum and multiple plan process applications

The Ministry will fund up to a maximum of \$40,000 plus GST per group, per application, in respect of any one case. Where the applicant is involved in a number of cases arising out of the same plan process, the Ministry will only approve funding after considering all the cases that the applicant is involved in. In this context, the “*plan process*” means appeals relating to *regional policy statements, regional and district plan reviews, plan changes or variations*.

Accordingly, applicants for ELA funding involving more than one case arising out of the same plan process must make one application to cover all cases. This application must cover all the issues and cases that are the subject of the plan process involving the applicant. It should detail:

- how and to what extent any of these cases are interrelated
- the plan process the cases relate to
- the counsel to be engaged
- what evidence is proposed, and by whom
- all information relating to any interlocutory proceedings and other procedural matters that may have taken place
- where known, any related parties involved in supporting the issues for which the group seeks funding (e.g. the Council, other groups) and the issues they are contesting.

Applicants will be expected to prioritise the cases and/or related issues. If funding is made available, it will be fixed in a sum that enables the applicant to participate in those cases with the highest priority. While the funding will not be limited to \$40,000 plus GST, the applicant should also not expect to receive the maximum funding of \$40,000 plus GST for each issue or case arising out of the same plan process.

Timeframes

Panel meetings are held approximately every five weeks. The close-off date for applications for each panel meeting is approximately three weeks before the meeting. The dates for upcoming panel meetings are available on the Ministry's [website](#).

As it takes time for applications to be processed, you are advised to apply for funding early, preferably as soon as you have lodged your appeal or otherwise become a party to proceedings. It is important that you include all the required information or processing your application will be delayed. Processing applications normally takes five to seven weeks.

Board of inquiry timeframes

If your group, as a submitter to a board of inquiry, is concerned about timeframes for receiving a decision on funding due to the board of inquiry's evidence exchange timetable, please contact the ELA Fund team to discuss.

Completing an application

Applications must be made on the official application form. This is available on the Ministry's website, www.mfe.govt.nz - go to "funding sources", then to "Environmental Legal Assistance Fund".

The application form is divided into seven sections. When submitting an application, place the application form at the front and attach any supporting information grouped according to the seven sections set out on the following pages.

1. Contact Details

Provide the contact details of the primary and secondary contacts for the group.

2. Group Details

- Identify the type of group by ticking the relevant box (e.g. iwi/hapu, residents and ratepayers group).
- State the objectives of the group.
- Provide the necessary supporting information depending on the legal status of the group (e.g. Incorporated Society or non-incorporated group).
- Complete the questions about financial details, and provide the supporting information required in question 2b. Note that all parts of 2b must be answered.
- Note whether the group is part of a larger national body, and if so, what the group's financial relationship is with the national body.

3. Application Details

- Indicate the type of case by ticking the relevant box.
- Outline the history of the group's involvement in the case.
- Outline the legal case and the group's argument.
- Describe the public interest in the case.
- List all the parties involved in the case.

4. Mediation

- Has the group been involved in mediation for the case?
- Have any issues been settled by mediation? If so, describe the issues that have been settled.

5. Supporting Information

- Identify the supporting documents provided with your application by ticking the relevant boxes. In all cases, regardless of the type of case, a location map must be provided (item D).

6. Funding Details

Complete parts A-F of the table provided. Indicate whether figures provided in A-E are inclusive or exclusive of GST by deleting as appropriate.

- A. The total cost of your case.** This refers to the total costs your group is expected to incur following the council hearing. In the case of the board of inquiry process, the total cost of your case is the estimated cost after submissions have been lodged. In many cases, the total cost of your case will be the same as the sum of the quotes from your legal counsel and expert witnesses.
- B. The amount you are requesting from the ELA Fund.** This should be the same as the amount given on the front of the application form. The maximum available is \$40,000 (excl GST).
- C. Total cash contribution your group will be making to your case** (if any).

- D. Pro bono contributions of legal counsel and/or expert witnesses.** The term pro bono refers to work that is performed free of charge. If your legal counsel or expert witnesses are offering their entire service pro bono, they will need to provide confirmation of this in writing, and this should be included as supporting information in your application (i.e. how much they would normally charge for the service). Include confirmation of any pro bono work undertaken on the case to date (e.g. for mediation).
- E. Discounted rates from legal counsel and/or expert witnesses.** This refers to when your legal counsel or expert witnesses provide their services to your group at a lower rate than their normal commercial rate. When calculating any such contributions, you should show the *difference* between the amount your legal counsel or expert witnesses would normally charge, and the amount they are charging you for the service. For example, if your lawyer estimates the time to work on the case is 10 hours, and would normally charge \$250 but is charging you a discounted rate of \$200, the contribution from discounted rates to show on your application form is \$500. Please ask your legal counsel and expert witnesses to show the difference between their normal and discounted rates in their quotes.
- F. For all legal representatives and expert witnesses,** attach a brief summary of their experience and expertise, including the Resource Management experience of your legal representative(s). This may be in the form of a CV.

For those legal representatives and expert witnesses for whom you are applying for funding, complete the information required in the table provided, and provide the summary of experience as outlined above. Attach an original copy of their quote as supporting information. Quotes must also set out the details contained in the table. Quotes provided in the body of an email will not be accepted.

7. Group's Declaration

- The application form should be signed by the primary and secondary contacts (or duly authorised members), and witnessed by a person authorised to take a statutory declaration, such as a Justice of the Peace.

Who makes the decision?

Each application is assessed by an Independent Advisory Panel against the ELA Fund's Primary Criteria and other matters for consideration. The Panel makes recommendations to the Director Operations of the Ministry. The Director Operations makes the final decision on whether to fund an application, under delegated authority from the Chief Executive.

The Panel will only revisit a matter if exceptional circumstances are established.

Successful applicants

If successful, applicants will be expected to enter into a Deed of Funding with the Ministry setting out the terms and conditions of funding. Your group will be required to report back and provide:

- an update on the case's progress by 1 June of each year until a decision on the case is reached.
- A [final report](#) once a decision is reached. The report will include an update on the outcome of the case, feedback regarding the value of funding received, a summary of money spent and a copy of the decision

The Ministry will only pay invoices from the group's legal representatives and expert witnesses identified in the Deed of Funding. Invoices must be made out to the Ministry for the Environment. In general, the Deed of Funding begins from the date the application was first received by the Ministry. Costs incurred by the group before this date are not eligible for funding.

Complaints from third parties

Where issues merit it, complaints or requests for review of decisions from third parties are submitted to the Advisory Panel for consideration. As with applications, the final decision is made by the Ministry's Director of Operations under delegated authority from the Chief Executive.

Send applications to:

Environmental Legal Assistance Fund
Ministry for the Environment
23 Kate Sheppard Place
Wellington 6011
or
PO Box 10362
23 Kate Sheppard Place
Wellington 6143

For more information please contact:

The ELA Fund
Telephone 0800 499 700
Fax (04) 439 7706
Email elafund@mfe.govt.nz