

**Reprint  
as at 1 April 2011**



**Resource Management Act 1991**

Public Act    1991 No 69  
Date of assent    22 July 1991  
Commencement    see section 1(2)

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

**This Act is administered by the Ministry for the Environment.**

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<i>[Repealed]</i>	

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**An Act to restate and reform the law relating to the use of land,  
air, and water**

**1 Short Title and commencement**

- (1) This Act may be cited as the Resource Management Act 1991.
- (2) Except as provided in subsection (3), this Act shall come into force on 1 October 1991.
- (3) *[Repealed]*

Section 1(3): repealed, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

**Part 1  
Interpretation and application**

**2 Interpretation**

- (1) In this Act, unless the context otherwise requires,—  
**abatement notice** means a notice served under section 322  
**access strip** means a strip of land created by the registration of an easement in accordance with section 237B for the purpose of allowing public access to or along any river, or lake, or the coast, or to any esplanade reserve, esplanade strip, other reserve, or land owned by the local authority or by the Crown (but excluding all land held for a public work except land held, administered, or managed under the Conservation Act 1987 and the Acts named in Schedule 1 of that Act)  
**accommodated activity** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011  
**accredited** means to hold a qualification approved and notified under section 39A  
**adverse effects assessment** means an assessment carried out—
  - (a) by the Minister of Conservation under Part 1 of Schedule 12; or
  - (b) by a regional council under section 17B(1)(a), in accordance with Part 2 of Schedule 12**adverse effects report** means a written report prepared—
  - (a) by the Minister of Conservation in accordance with Part 1 of Schedule 12; or

- (b) by a regional council under section 17B(1)(b), in accordance with Part 2 of Schedule 12

**agent or agent of the ship**, in relation to a ship, means—

- (a) any agent in New Zealand of the owner of the ship; or
- (b) any agent of the ship

**agreement** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**aircraft** means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by reactions of the air against the surface of the earth

**airport** means any defined area of land or water intended or designed to be used, whether wholly or partly, for the landing, departure, movement, or servicing of aircraft

**allotment** has the meaning set out in section 218

**amenity values** means those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes

**applicant**,—

- (a) in sections 37A, 40, 41B, 41C, and 42A means—
  - (i) for the purposes of a review of consent conditions, the consent holder; or
  - (ii) for any matter described in section 39(1) except for section 39(1)(c), the person who initiates the matter:
- (b) in section 96, means the person who—
  - (i) initiates a matter described in section 39(1)(b) or (d); or
  - (ii) holds a resource consent referred to in section 39(1)(c); or
  - (iii) initiates a requirement for a designation:
- (c) in Part 6AA, has the meaning given in section 141

**aquaculture activities**—

- (a) means the breeding, hatching, cultivating, rearing, or ongrowing of fish, aquatic life, or seaweed for harvest if the breeding, hatching, cultivating, rearing, or ongrowing involves the occupation of a coastal marine area; and

- (b) includes the taking of harvestable spat if the taking involves the occupation of a coastal marine area; but
- (c) does not include an activity specified in paragraph (a) if the fish, aquatic life, or seaweed—
  - (i) are not in the exclusive and continuous possession or control of the person undertaking the activity; or
  - (ii) cannot be distinguished or kept separate from naturally occurring fish, aquatic life, or seaweed

**aquaculture management area—**

- (a) means an area established as an aquaculture management area in accordance with section 165AB; and
- (b) includes part of an aquaculture management area

**aquatic life** has the same meaning as in section 2(1) of the Fisheries Act 1996

**bed** means,—

- (a) in relation to any river—
  - (i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the river cover at its annual fullest flow without overtopping its banks:
  - (ii) in all other cases, the space of land which the waters of the river cover at its fullest flow without overtopping its banks; and
- (b) in relation to any lake, except a lake controlled by artificial means,—
  - (i) for the purposes of esplanade reserves, esplanade strips, and subdivision, the space of land which the waters of the lake cover at its annual highest level without exceeding its margin:
  - (ii) in all other cases, the space of land which the waters of the lake cover at its highest level without exceeding its margin; and
- (c) in relation to any lake controlled by artificial means, the space of land which the waters of the lake cover at its maximum permitted operating level; and
- (d) in relation to the sea, the submarine areas covered by the internal waters and the territorial sea

**benefits and costs** includes benefits and costs of any kind, whether monetary or non-monetary

**best practicable option**, in relation to a discharge of a contaminant or an emission of noise, means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to—

- (a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and
- (b) the financial implications, and the effects on the environment, of that option when compared with other options; and
- (c) the current state of technical knowledge and the likelihood that the option can be successfully applied

**biological diversity** means the variability among living organisms, and the ecological complexes of which they are a part, including diversity within species, between species, and of ecosystems

**certificate of compliance** means a certificate granted by a consent authority or the Environmental Protection Authority under section 139

**change** has the meaning given in section 43AA

**climate change** means a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods

**coastal marine area** means the foreshore, seabed, and coastal water, and the air space above the water—

- (a) of which the seaward boundary is the outer limits of the territorial sea:
- (b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—
  - (i) 1 kilometre upstream from the mouth of the river; or
  - (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5

**coastal permit** has the meaning set out in section 87(c)

**coastal water** means seawater within the outer limits of the territorial sea and includes—

- (a) seawater with a substantial fresh water component; and
- (b) seawater in estuaries, fiords, inlets, harbours, or embayments

**commercial fishing** has the same meaning as in section 2(1) of the Fisheries Act 1996

**common marine and coastal area** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**company lease** means a lease or licence or other right of occupation of any building or part of any building on, or to be erected on, any land—

- (a) that is granted by a company owning an estate or interest in the land; and
- (b) that is held by a person by virtue of being a shareholder in the company,—

and includes a licence within the meaning of section 121A of the Land Transfer Act 1952

**completion certificate** means a certificate issued under section 222

**conditions**, in relation to plans and resource consents, includes terms, standards, restrictions, and prohibitions

**consent authority** means a regional council, a territorial authority, or a local authority that is both a regional council and a territorial authority, whose permission is required to carry out an activity for which a resource consent is required under this Act

**consent notice** means a notice issued under section 221

**constable** has the meaning given in section 4 of the Policing Act 2008

**contaminant** includes any substance (including gases, odorous compounds, liquids, solids, and micro-organisms) or energy (excluding noise) or heat, that either by itself or in com-

ination with the same, similar, or other substances, energy, or heat—

- (a) when discharged into water, changes or is likely to change the physical, chemical, or biological condition of water; or
- (b) when discharged onto or into land or into air, changes or is likely to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged

**contaminated land** means land that has a hazardous substance in or on it that—

- (a) has significant adverse effects on the environment; or
- (b) is reasonably likely to have significant adverse effects on the environment

**contravene** includes fail to comply with

**controlled activity** means an activity described in section 87A(2)

**cross lease** means a lease of any building or part of any building on, or to be erected on, any land—

- (a) that is granted by any owner of the land; and
- (b) that is held by a person who has an estate or interest in an undivided share in the land

**Crown organisation** has the same meaning as in section 4 of the Crown Organisations (Criminal Liability) Act 2002

**customary marine title area** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**customary marine title group** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**customary marine title order** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**designation** has the meaning set out in section 166

**determination** has the same meaning as in section 2(1) of the Fisheries Act 1996

**Director of Maritime New Zealand** or **Director** means the person for the time being holding the office of Director of



Maritime New Zealand under section 439 of the Maritime Transport Act 1994

**discharge** includes emit, deposit, and allow to escape

**discharge permit** has the meaning set out in section 87(e)

**discretionary activity** means an activity described in section 87A(4)

**district**, in relation to a territorial authority,—

- (a) means the district of the territorial authority as defined in accordance with the Local Government Act 2002 but, except as provided in paragraph (b), does not include any area in the coastal marine area;
- (b) includes, for the purposes of section 89, any area in the coastal marine area

**district plan** has the meaning given in section 43AA

**district rule** has the meaning given in section 43AAB

**dumping** means,—

- (a) in relation to waste or other matter, its deliberate disposal; and
- (b) in relation to a ship, an aircraft, or an offshore installation, its deliberate disposal or abandonment;—

but does not include the disposal of waste or other matter incidental to, or derived from, the normal operations of a ship, aircraft, or offshore installation, if those operations are prescribed as the normal operations of a ship, aircraft, or offshore installation, or if the purpose of those operations does not include the disposal, or the treatment or transportation for disposal, of that waste or other matter; and **to dump** and **dumped** have corresponding meanings

**dwellinghouse** means any building, whether permanent or temporary, that is occupied, in whole or in part, as a residence; and includes any structure or outdoor living area that is accessory to, and used wholly or principally for the purposes of, the residence; but does not include the land upon which the residence is sited

**employee** includes,—

- (a) in relation to a Crown organisation, the chief executive or principal officer (however described) of the organisation; and

- (b) in relation to the New Zealand Defence Force, a member of the Armed Forces (as defined in section 2(1) of the Defence Act 1990)

**enforcement officer** means any person authorised under section 38

**enforcement order** means an order made under section 319 for any of the purposes set out in section 314; and includes an interim enforcement order made under section 320

**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) or which are affected by those matters

**Environment Court** and **court** means the Environment Court referred to in section 247

**Environmental Protection Authority** or **EPA** means the Environmental Protection Authority established under section 42B

**esplanade reserve** means a reserve within the meaning of the Reserves Act 1977—

- (a) which is either—
  - (i) a local purpose reserve within the meaning of section 23 of that Act, if vested in the territorial authority under section 239; or
  - (ii) a reserve vested in the Crown or a regional council under section 237D; and
- (b) which is vested in the territorial authority, regional council, or the Crown for a purpose or purposes set out in section 229

**esplanade strip** means a strip of land created by the registration of an instrument in accordance with section 232 for a purpose or purposes set out in section 229

**excessive noise** has the meaning set out in section 326

**existing use certificate** means a certificate issued under section 139A

**exploration** has the same meaning as in the Crown Minerals Act 1991

**fish** has the same meaning as in section 2(1) of the Fisheries Act 1996

**fisheries resources** has the same meaning as in section 2(1) of the Fisheries Act 1996

**fishing** has the same meaning as in section 2(1) of the Fisheries Act 1996

**foreshore** means any land covered and uncovered by the flow and ebb of the tide at mean spring tides and, in relation to any such land that forms part of the bed of a river, does not include any area that is not part of the coastal marine area

**fresh water** means all water except coastal water and geothermal water

**geothermal energy** means energy derived or derivable from and produced within the earth by natural heat phenomena; and includes all geothermal water

**geothermal water** means water heated within the earth by natural phenomena to a temperature of 30 degrees Celsius or more; and includes all steam, water, and water vapour, and every mixture of all or any of them that has been heated by natural phenomena

**greenhouse gas** has the meaning given to it in section 4(1) of the Climate Change Response Act 2002

**harmful substance** means any substance prescribed by regulations as a harmful substance for the purposes of this definition

**harvestable spat** has the same meaning as in section 2(1) of the Fisheries Act 1996

**hazardous substance** includes, but is not limited to, any substance defined in section 2 of the Hazardous Substances and New Organisms Act 1996 as a hazardous substance

**heritage order** has the meaning set out in section 187

**heritage protection authority** has the meaning set out in section 187

**historic heritage—**

- (a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:
  - (i) archaeological;
  - (ii) architectural;
  - (iii) cultural;
  - (iv) historic;
  - (v) scientific;
  - (vi) technological; and
- (b) includes—
  - (i) historic sites, structures, places, and areas; and
  - (ii) archaeological sites; and
  - (iii) sites of significance to Māori, including wāhi tapu; and
  - (iv) surroundings associated with the natural and physical resources

**incineration**, in relation to waste or other matter, means its deliberate combustion for the purpose of its thermal destruction; and **to incinerate** and **incinerated** have corresponding meanings

**industrial or trade premises** means—

- (a) any premises used for any industrial or trade purposes; or
- (b) any premises used for the storage, transfer, treatment, or disposal of waste materials or for other waste-management purposes, or used for composting organic materials; or
- (c) any other premises from which a contaminant is discharged in connection with any industrial or trade process—

but does not include any production land

**industrial or trade process** includes every part of a process from the receipt of raw material to the dispatch or use in another process or disposal of any product or waste material, and any intervening storage of the raw material, partly processed matter, or product

**infrastructure**, in section 30, means—

- (a) pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or geothermal energy:
- (b) a network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001:
- (c) a network for the purpose of radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989:
- (d) facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person—
  - (i) uses them in connection with the generation of electricity for the person's use; and
  - (ii) does not use them to generate any electricity for supply to any other person:
- (e) a water supply distribution system, including a system for irrigation:
- (f) a drainage or sewerage system:
- (g) structures for transport on land by cycleways, rail, roads, walkways, or any other means:
- (h) facilities for the loading or unloading of cargo or passengers transported on land by any means:
- (i) an airport as defined in section 2 of the Airport Authorities Act 1966:
- (j) a navigation installation as defined in section 2 of the Civil Aviation Act 1990:
- (k) facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in section 2(1) of the Port Companies Act 1988:
- (l) anything described as a network utility operation in regulations made for the purposes of the definition of network utility operator in section 166

**interim enforcement order** means an order made under section 320

**internal waters** has the same meaning as in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

**intrinsic values**, in relation to ecosystems, means those aspects of ecosystems and their constituent parts which have value in their own right, including—

- (a) their biological and genetic diversity; and
- (b) the essential characteristics that determine an ecosystem's integrity, form, functioning, and resilience

**iwi authority** means the authority which represents an iwi and which is recognised by that iwi as having authority to do so

**joint management agreement** means an agreement that—

- (a) is made by a local authority with 1 or more—
  - (i) public authorities, as defined in paragraph (b) of the definition of public authority;
  - (ii) iwi authorities or groups that represent hapu; and
- (b) provides for the parties to the joint management agreement jointly to perform or exercise any of the local authority's functions, powers, or duties under this Act relating to a natural or physical resource; and
- (c) specifies the functions, powers, or duties; and
- (d) specifies the natural or physical resource; and
- (e) specifies whether the natural or physical resource is in the whole of the region or district or part of the region or district; and
- (f) may require the parties to the joint management agreement to perform or exercise a specified function, power, or duty together; and
- (g) if paragraph (f) applies, specifies how the parties to the joint management agreement are to make decisions; and
- (h) may specify any other terms or conditions relevant to the performance or exercise of the functions, powers, or duties, including but not limited to terms or conditions for liability and funding

**kaitiakitanga** means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources; and includes the ethic of stewardship

**lake** means a body of fresh water which is entirely or nearly surrounded by land

**land—**

- (a) includes land covered by water and the airspace above land; and
- (b) in a national environmental standard dealing with a regional council function under section 30 or a regional rule, does not include the bed of a lake or river; and
- (c) in a national environmental standard dealing with a territorial authority function under section 31 or a district rule, includes the surface of water in a lake or river

**land use consent** has the meaning set out in section 87(a)

**local authority** means a regional council or territorial authority

**maataitai** means food resources from the sea and **mahinga maataitai** means the areas from which these resources are gathered

**mana whenua** means customary authority exercised by an iwi or hapu in an identified area

**marine and coastal area** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**marine incineration facility** has the same meaning as in section 257 of the Maritime Transport Act 1994

**Maritime New Zealand** means the authority continued by section 429 of the Maritime Transport Act 1994

**master** in relation to any ship, has the same meaning as in section 2(1) of the Maritime Transport Act 1994

**mineral** has the same meaning as in section 2(1) of the Crown Minerals Act 1991

**mining** has the same meaning as in the Crown Minerals Act 1991

**Minister** means the Minister for the Environment

**mouth**, for the purpose of defining the landward boundary of the coastal marine area, means the mouth of the river either—

- (a) as agreed and set between the Minister of Conservation, the regional council, and the appropriate territorial au-

- thority in the period between consultation on, and notification of, the proposed regional coastal plan; or
- (b) as declared by the Environment Court under section 310 upon application made by the Minister of Conservation, the regional council, or the territorial authority prior to the plan becoming operative,—

and once so agreed and set or declared shall not be changed in accordance with Schedule 1 or otherwise varied, altered, questioned, or reviewed in any way until the next review of the regional coastal plan, unless the Minister of Conservation, the regional council, and the appropriate territorial authority agree

**national environmental standard** means a standard prescribed by regulations made under section 43

**national policy statement** means a statement issued under section 52

**natural and physical resources** includes land, water, air, soil, minerals, and energy, all forms of plants and animals (whether native to New Zealand or introduced), and all structures

**natural hazard** means any atmospheric or earth or water related occurrence (including earthquake, tsunami, erosion, volcanic and geothermal activity, landslip, subsidence, sedimentation, wind, drought, fire, or flooding) the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment

**network utility operator** has the meaning set out in section 166

**New Zealand coastal policy statement** means a statement issued under section 57

**noise** includes vibration

**non-complying activity** means an activity described in section 87A(5)

**notice of decision** means—

- (a) a copy of a decision on—
- (i) an application for a resource consent; or
  - (ii) a requirement for a designation; or
  - (iii) a provision of a policy statement or plan; or
- (b) a notice summarising a decision under paragraph (a)



**occupier** means—

- (a) the inhabitant occupier of any property; and
- (b) *[Repealed]*
- (c) for the purposes of section 16, in relation to any land (including any premises and any coastal marine area), includes any agent, employee, or other person acting or apparently acting in the general management or control of the land, or any plant or machinery on that land

**occupy** means the activity of occupying any part of the coastal marine area—

- (a) where the occupation is reasonably necessary for another activity; and
- (b) where it is to the exclusion of all or any class of persons who are not expressly allowed to occupy that part of the coastal marine area by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent; and
- (c) for a period of time and in a way that, but for a rule in the regional coastal plan and in any relevant proposed regional coastal plan or the holding of a resource consent under this Act, a lease or licence to occupy that part of the coastal marine area would be necessary to give effect to the exclusion of other persons, whether in a physical or legal sense

**offshore installation** has the same meaning as in section 222(1) of the Maritime Transport Act 1994

**oil transfer site** has the same meaning as in section 281 of the Maritime Transport Act 1994

**on-scene commander** has the same meaning as in section 281 of the Maritime Transport Act 1994

**open coastal water** means coastal water that is remote from estuaries, fiords, inlets, harbours, and embayments

**operative** has the meaning given in section 43AA

**owner**,—

- (a) in relation to any land, means the person who is for the time being entitled to the rack rent of the land or who would be so entitled if the land were let to a tenant at a rack rent; and includes—

- (i) the owner of the fee simple of the land; and
  - (ii) any person who has agreed in writing, whether conditionally or unconditionally, to purchase the land or any leasehold estate or interest in the land, or to take a lease of the land, while the agreement remains in force; and
- (b) in relation to any ship or offshore installation or oil transfer site, has the same meaning as in section 222(2) of the Maritime Transport Act 1994

**permitted activity** means an activity described in section 87A(1)

**person** includes the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporate

**plan** has the meaning given in section 43AA

**planning document** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**policy statement** has the meaning given in section 43AA

**prescribed** means prescribed by regulations made under this Act

**prescribed form** means a form prescribed by regulations made under this Act and containing and having attached such information and documents as those regulations may require

**private road** has the same meaning as in section 315 of the Local Government Act 1974

**private way** has the same meaning as in section 315 of the Local Government Act 1974

**production land**—

- (a) means any land and auxiliary buildings used for the production (but not processing) of primary products (including agricultural, pastoral, horticultural, and forestry products):
- (b) does not include land or auxiliary buildings used or associated with prospecting, exploration, or mining for minerals,—

and **production** has a corresponding meaning

**prohibited activity** means an activity described in section 87A(6)

**proposed plan** has the meaning given in section 43AAC

**proposed policy statement** has the meaning given in section 43AA

**prospecting** has the same meaning as in the Crown Minerals Act 1991

**protected customary right** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**protected customary rights area** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**protected customary rights group** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**protected customary rights order** has the meaning given in section 9(1) of the Marine and Coastal Area (Takutai Moana) Act 2011

**public authority**,—

- (a) in section 33, has the meaning given to it by section 33(2); and
- (b) in section 36B and the definition of joint management agreement, means—
  - (i) a local authority; and
  - (ii) a statutory body; and
  - (iii) the Crown

**public notice**—

- (a) means a notice published in a newspaper circulating in the entire area likely to be affected by the proposal to which the notice relates; and
- (b) if a local authority also publishes a notice on an Internet site to which the public have free access, includes that notice

**public work** has the same meaning as in the Public Works Act 1981, and includes any existing or proposed public reserve within the meaning of the Reserves Act 1977 and any national park purposes under the National Parks Act 1980

**raft** means any moored floating platform which is not self-propelled; and includes platforms that provide buoyancy support for the surfaces on which fish or marine vegetation are cultivated or for any cage or other device used to contain or restrain

fish or marine vegetation; but does not include booms situated on lakes subject to artificial control which have been installed to ensure the safe operation of electricity generating facilities

**region**, in relation to a regional council, means the region of the regional council as determined in accordance with the Local Government Act 2002

**regional coastal plan** has the meaning given in section 43AA

**regional council**—

- (a) has the same meaning as in section 5 of the Local Government Act 2002; and
- (b) includes a unitary authority within the meaning of that Act

**regional plan** has the meaning given in section 43AA

**regional policy statement** has the meaning given in section 43AA

**regional rule** has the meaning given in section 43AAB

**regulations** means regulations made under this Act

**renewable energy** means energy produced from solar, wind, hydro, geothermal, biomass, tidal, wave, and ocean current sources

**requiring authority** has the meaning set out in section 166

**reservation** has the same meaning as in section 2(1) of the Fisheries Act 1996

**resource consent** has the meaning set out in section 87; and includes all conditions to which the consent is subject

**restricted coastal activity** means any discretionary activity or non-complying activity that, in accordance with section 68, is stated by a regional coastal plan to be a restricted coastal activity

**restricted discretionary activity** means an activity described in section 87A(3)

**river** means a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse (including an irrigation canal, water supply race, canal for the supply of water for electricity power generation, and farm drainage canal)

**RMA permission right** means the right provided for a customary marine title group by sections 66 and 68 of the Marine and Coastal Area (Takutai Moana) Act 2011

**road** has the same meaning as in section 315 of the Local Government Act 1974; and includes a motorway as defined in section 2(1) of the Government Roding Powers Act 1989

**rule** has the meaning given in section 43AA

**seaweed** has the same meaning as in section 2(1) of the Fisheries Act 1996

**serve** means serve in accordance with section 352 or section 353

**ship** has the same meaning as in section 2(1) of the Maritime Transport Act 1994

**soil conservation** means avoiding, remedying, or mitigating soil erosion and maintaining the physical, chemical, and biological qualities of soil

**space**, in relation to the coastal marine area, means any part of the foreshore, seabed, and coastal water, and the airspace above the water

**special tribunal** means a special tribunal appointed under section 202 to hear an application for a water conservation order

**State highway** has the same meaning as in section 2(1) of the Government Roding Powers Act 1989

**structure** means any building, equipment, device, or other facility made by people and which is fixed to land; and includes any raft

**subdivision consent** has the meaning set out in section 87(b)

**subdivision of land** and **subdivide land** have the meanings set out in section 218

**submission** means a written or electronic submission

**survey plan** has the meaning set out in the following paragraphs, in which **cadastral survey dataset** has the same meaning as in section 4 of the Cadastral Survey Act 2002:

(a) **survey plan** means—

- (i) a cadastral survey dataset of subdivision of land, or a building or part of a building, prepared in a

form suitable for deposit under the Land Transfer Act 1952; and

- (ii) a cadastral survey dataset of a subdivision by or on behalf of a Minister of the Crown of land not subject to the Land Transfer Act 1952:

(b) **survey plan** includes—

- (i) a unit plan; and
- (ii) a cadastral survey dataset to give effect to the grant of a cross lease or company lease

**tangata whenua**, in relation to a particular area, means the iwi, or hapu, that holds mana whenua over that area

**taonga raranga** means plants which produce material highly prized for use in weaving

**tauranga waka** means canoe landing sites

**territorial authority** means a territorial authority within the meaning of the Local Government Act 2002

**territorial sea** means the territorial sea of New Zealand as defined by section 3 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977

**tikanga Maori** means Maori customary values and practices

**Treaty of Waitangi (Te Tiriti o Waitangi)** has the same meaning as the word Treaty as defined in section 2 of the Treaty of Waitangi Act 1975

**unit** has the same meaning as in section 2 of the Unit Titles Act 1972; and includes a future development unit as defined in section 2 of the Unit Titles Amendment Act 1979

**unit plan** has the same meaning as in section 2 of the Unit Titles Act 1972; and includes a proposed unit development plan within the meaning of that Act but does not include a stage unit plan or a complete unit plan within the meaning of that Act

**use,—**

- (a) in sections 9, 10, 10A, 10B, 81(2), 176(1)(b)(i), and 193(a), means—
  - (i) alter, demolish, erect, extend, place, reconstruct, remove, or use a structure or part of a structure in, on, under, or over land:

- (ii) drill, excavate, or tunnel land or disturb land in a similar way:
- (iii) damage, destroy, or disturb the habitats of plants or animals in, on, or under land:
- (iv) deposit a substance in, on, or under land:
- (v) any other use of land; and
- (b) in sections 9, 10A, 81(2), 176(1)(b)(i), and 193(a), also means to enter onto or pass across the surface of water in a lake or river

**variation** has the meaning given in section 43AA

**waste or other matter** means materials and substances of any kind, form, or description

**water**—

- (a) means water in all its physical forms whether flowing or not and whether over or under the ground:
- (b) includes fresh water, coastal water, and geothermal water:
- (c) does not include water in any form while in any pipe, tank, or cistern

**water body** means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area

**water conservation order** has the meaning set out in section 200

**water permit** has the meaning set out in section 87(d)

**wetland** includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions

**working day** means any day except—

- (a) a Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
  - (b) a day in the period beginning on 20 December in any year and ending with 10 January in the following year.
- (2) In this Act, unless the context otherwise requires,—
- (a) a reference to a Part, section, or schedule, is a reference to a Part, section, or schedule of this Act:

- (b) a reference in a section to a subsection is a reference to a subsection of that section:
- (c) a reference in a subsection to a paragraph is a reference to a paragraph of that subsection:
- (d) a reference in a section to a paragraph is a reference to a paragraph of that section:
- (e) a reference in a schedule to a clause is a reference to a clause of that schedule:
- (f) a reference in a clause of a schedule to a subclause is a reference to a subclause of that clause:
- (g) a reference in a subclause in a schedule to a paragraph is a reference to a paragraph of that subclause:
- (h) a reference in a clause in a schedule to a paragraph is a reference to a paragraph of that clause.

Section 2(1) **access rights**: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **access strip**: inserted, on 7 July 1993, by section 2(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **accommodated activity**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **accredited**: inserted, on 10 August 2005, by section 4(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 2(1) **adverse effects assessment**: inserted, on 25 November 2004, by section 3(1) of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 2(1) **adverse effects report**: inserted, on 25 November 2004, by section 3(1) of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 2(1) **agent** or **agent of the ship**: inserted, on 1 February 1995, by section 2(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 2(1) **agreement**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **aircraft**: inserted, on 7 July 1993, by section 2(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **airport**: inserted, on 7 July 1993, by section 2(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **amendment**: repealed, on 1 October 2009, by section 4(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **applicant**: substituted, on 1 October 2009, by section 4(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).



Section 2(1) **aquaculture activities**: substituted, on 1 January 2005, by section 4(2) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **aquaculture management area**: substituted, on 28 September 2008, by section 4 of the Resource Management Amendment Act 2008 (2008 No 95).

Section 2(1) **aquatic life**: inserted, on 1 January 2005, by section 4(3) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **bed**: substituted, on 7 July 1993, by section 2(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **benefits and costs**: inserted, on 7 July 1993, by section 2(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **biological diversity**: inserted, on 1 August 2003, by section 3(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 2(1) **board**: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **board of inquiry**: repealed, on 1 October 2009, by section 4(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **certificate of compliance**: amended, on 1 October 2009, by section 4(5) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **change**: substituted, on 1 October 2009, by section 4(6) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **climate change**: inserted, on 2 March 2004, by section 4 of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

Section 2(1) **coastal marine area**: amended, on 7 July 1993, by section 2(6) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **commercial fishing**: inserted, on 1 January 2005, by section 4(3) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **common marine and coastal area**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **company lease**: amended, on 1 July 1994, by section 4 of the Land Transfer Amendment Act 1993 (1993 No 124).

Section 2(1) **consent authority**: substituted, on 7 July 1993, by section 2(7) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **consent authority**: amended, on 1 October 2009, by section 4(7) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **constable**: substituted, on 1 October 2008, by section 130(1) of the Policing Act 2008 (2008 No 72).

Section 2(1) **contaminant**: amended, on 1 August 2003, by section 3(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 2(1) **contaminated land**: substituted, on 1 October 2009, by section 4(8) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **controlled activity**: substituted, on 1 August 2003, by section 3(4) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 2(1) **controlled activity**: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **costs and benefits**: repealed, on 7 July 1993, by section 2(9) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **Crown organisation**: inserted, on 1 October 2009, by section 4(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **customary marine title area**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **customary marine title group**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **customary marine title order**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **customary rights order**: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **declaration**: repealed, on 1 October 2009, by section 4(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **determination**: inserted, on 1 January 2005, by section 4(3) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **Director of Maritime New Zealand** or **Director**: substituted, on 1 July 2005, by section 11(3) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 2(1) **discretionary activity**: substituted, on 1 August 2003, by section 3(5) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 2(1) **discretionary activity**: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **district**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2(1) **district plan**: substituted, on 1 October 2009, by section 4(9) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **district rule**: substituted, on 1 October 2009, by section 4(10) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **dumping**: substituted, on 17 December 1997, by section 2(9) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 2(1) **employee**: inserted, on 1 October 2009, by section 4(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **Environment Court** and **court**: inserted, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 2(1) **Environmental Protection Authority** or **EPA**: inserted, on 1 October 2009, by section 4(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **esplanade reserve**: substituted, on 7 July 1993, by section 2(11) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **esplanade strip**: inserted, on 7 July 1993, by section 2(11) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **existing use certificate**: inserted, on 10 August 2005, by section 4(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 2(1) **exploration**: inserted, on 26 November 1997, by section 4(2) of the Crown Minerals Amendment Act (No 2) 1997 (1997 No 91).

Section 2(1) **fish**: inserted, on 1 January 2005, by section 4(3) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **fisheries resources**: inserted, on 1 January 2005, by section 4(3) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **fishing**: inserted, on 1 January 2005, by section 4(3) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **foreshore and seabed reserve**: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **Government road**: repealed, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2(1) **greenhouse gas**: inserted, on 2 March 2004, by section 4 of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

Section 2(1) **harmful substance**: inserted, on 1 February 1995, by section 2(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 2(1) **harvestable spat**: inserted, on 1 January 2005, by section 4(3) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **hazardous substance**: inserted, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

Section 2(1) **historic heritage**: inserted, on 1 August 2003, by section 3(7) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 2(1) **holder**: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **incineration**: inserted, on 1 February 1995, by section 2(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 2(1) **industrial or trade premises**: amended, on 17 December 1997, by section 2(3) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 2(1) **infrastructure**: inserted, on 10 August 2005, by section 4(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 2(1) **infrastructure** paragraph (a): amended, on 1 October 2008, by section 17 of the Energy (Fuels, Levies, and References) Amendment Act 2008 (2008 No 60).

Section 2(1) **internal waters**: amended, on 1 August 1996, pursuant to section 5(4) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74).

Section 2(1) **joint management agreement**: inserted, on 10 August 2005, by section 4(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 2(1) **kaitiakitanga**: substituted, on 17 December 1997, by section 2(4) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 2(1) **lake**: amended, on 7 July 1993, by section 2(12) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **land**: substituted, on 1 October 2009, by section 4(11) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **management plan**: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **marine and coastal area**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **marine farming**: repealed, on 1 January 2005, by section 4(1) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **marine incineration facility**: inserted, on 1 February 1995, by section 2(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 2(1) **Maritime New Zealand**: substituted, on 1 July 2005, by section 11(3) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 2(1) **master**: inserted, on 1 February 1995, by section 2(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 2(1) **mineral**: substituted, on 7 July 1993, by section 2(13) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **mining**: inserted, on 26 November 1997, by section 4(2) of the Crown Minerals Amendment Act (No 2) 1997 (1997 No 91).

Section 2(1) **mouth**: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 2(1) **national environmental standard**: inserted, on 10 August 2005, by section 4(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 2(1) **non-complying activity**: substituted, on 1 August 2003, by section 3(8) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 2(1) **non-complying activity**: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **notice of decision**: inserted, on 1 August 2003, by section 3(8) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 2(1) **occupier** paragraph (b): repealed, on 1 July 2003, by section 138(1) of the Local Government (Rating) Act 2002 (2002 No 6).

Section 2(1) **occupy**: inserted, on 1 January 2005, by section 4(3) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **offshore installation**: inserted, on 1 February 1995, by section 2(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 2(1) **oil transfer site**: inserted, on 1 February 1995, by section 2(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 2(1) **on-scene commander**: inserted, on 1 February 1995, by section 2(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 2(1) **operative**: substituted, on 1 October 2009, by section 4(12) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **owner**: substituted, on 1 February 1995, by section 2(1) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 2(1) **permitted activity**: substituted, on 1 August 2003, by section 3(9) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 2(1) **permitted activity**: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **plan**: substituted, on 1 October 2009, by section 4(13) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **planning document**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **Planning Tribunal** and **Tribunal**: repealed, on 17 December 1997, by section 2(6) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 2(1) **policy statement**: substituted, on 1 October 2009, by section 4(14) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **production land** paragraph (b): amended, on 17 December 1997, by section 2(7) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 2(1) **prohibited activity**: substituted, on 1 August 2003, by section 3(10) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 2(1) **prohibited activity**: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **proposed plan**: substituted, on 1 October 2009, by section 4(15) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **proposed policy statement**: inserted, on 1 October 2009, by section 4(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **prospecting**: inserted, on 26 November 1997, by section 4(2) of the Crown Minerals Amendment Act (No 2) 1997 (1997 No 91).

Section 2(1) **protected customary right**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **protected customary rights area**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **protected customary rights group**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **protected customary rights order**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **public authority**: inserted, on 10 August 2005, by section 4(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 2(1) **public foreshore and seabed**: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **public notice**: substituted, on 1 October 2009, by section 4(16) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **raft**: inserted, on 7 July 1993, by section 2(15) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **recognised customary activity**: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **region**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2(1) **regional coastal plan**: substituted, on 1 October 2009, by section 4(17) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **regional council**: substituted, on 25 November 2004, by section 3(2) of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 2(1) **regional plan**: substituted, on 1 October 2009, by section 4(18) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **regional policy statement**: substituted, on 1 October 2009, by section 4(19) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **regional road**: repealed, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2(1) **regional rule**: substituted, on 1 October 2009, by section 4(20) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **renewable energy**: inserted, on 2 March 2004, by section 4 of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

Section 2(1) **reservation**: inserted, on 1 January 2005, by section 4(3) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **restricted coastal activity**: substituted, on 1 October 2009, by section 4(21) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **restricted discretionary activity**: inserted, on 1 August 2003, by section 3(13) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 2(1) **restricted discretionary activity**: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **river**: substituted, on 7 July 1993, by section 2(16) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **RMA permission right**: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2(1) **road**: amended, on 1 August 2008, by section 50(1) of the Land Transport Management Amendment Act 2008 (2008 No 47).

Section 2(1) **road**: amended, on 7 July 1993, by section 2(17) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **rule**: substituted, on 1 October 2009, by section 4(22) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **seaweed**: inserted, on 1 January 2005, by section 4(3) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **ship**: inserted, on 1 February 1995, by section 2(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 2(1) **soil conservation**: inserted, on 1 August 2003, by section 3(14) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 2(1) **space**: inserted, on 1 January 2005, by section 4(3) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **spat**: repealed, on 1 January 2005, by section 4(1) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **spat catching**: repealed, on 1 January 2005, by section 4(1) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(2) **State highway**: amended, on 1 August 2008, by section 50(1) of the Land Transport Management Amendment Act 2008 (2008 No 47).

Section 2(1) **structure**: amended, on 7 July 1993, by section 2(18) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 2(1) **submission**: substituted, on 1 October 2009, by section 4(23) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **survey plan**: substituted, on 1 October 2009, by section 4(24) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **taking**: repealed, on 1 January 2005, by section 4(1) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 2(1) **territorial authority**: substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 2(1) **territorial sea**: amended, on 1 August 1996, pursuant to section 5(4) of the Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996 No 74).

Section 2(1) **use**: inserted, on 1 October 2009, by section 4(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **variation**: substituted, on 1 October 2009, by section 4(25) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2(1) **waste or other matter**: inserted, on 1 February 1995, by section 2(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 2(1) **working day**: substituted, on 1 August 2003, by section 3(15) of the Resource Management Amendment Act 2003 (2003 No 23).

## 2AA Definitions relating to notification

- (1) The definitions in subsection (2) apply only in relation to—
  - (a) an application for a resource consent for an activity; or
  - (b) any of the following matters:
    - (i) a review of a resource consent:
    - (ii) an application to change or cancel a condition of a resource consent:
    - (iii) a notice of requirement for a designation or heritage order:
    - (iv) a notice of requirement to alter a designation or heritage order:
    - (v) an application or proposal to vary or cancel an instrument creating an esplanade strip:
    - (vi) a matter of creating an esplanade strip by agreement.
- (2) In this Act, unless the context requires another meaning,—

**affected person** means a person who, under section 95E, is decided to be an affected person in relation to the application or matter



**limited notification** means serving notice of the application or matter on any affected person within the time limit specified by section 95

**notification** means public notification or limited notification of the application or matter

**public notification** means doing the following within the time limit specified by section 95:

- (a) giving public notice of the application or matter in the prescribed form; and
- (b) serving notice of the application or matter on every prescribed person.

Section 2AA: inserted, on 1 October 2009, by section 5 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 2AA(2) **affected order holder**: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 2AA(2) **limited notification**: amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

## 2A Successors

- (1) In this Act, unless the context otherwise requires, any reference to a **person**, however described or referred to (including applicant and consent holder), includes the successor of that person.
- (2) For the purposes of this Act, where the person is a body of persons which is unincorporate, the successor shall include a body of persons which is corporate and composed of substantially the same members.

Section 2A: inserted, on 2 September 1996, by section 3 of the Resource Management Amendment Act 1996 (1996 No 160).

## 3 Meaning of effect

In this Act, 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.

Section 3: amended, on 7 July 1993, by section 3 of the Resource Management Amendment Act 1993 (1993 No 65).

### **3A Person acting under resource consent with permission**

Subject to section 134 and any specific conditions included in the resource consent, any reference in this Act to activities being allowed by a resource consent includes a reference to a person acting under a resource consent with the permission (including implied permission) of the consent holder as if the resource consent had been granted to that person as well as to the holder of the resource consent.

Section 3A: inserted, on 7 July 1993, by section 4 of the Resource Management Amendment Act 1993 (1993 No 65).

## **4 Act to bind the Crown**

- (1) This Act binds the Crown, except as provided in this section.
- (2) This Act does not apply to any work or activity of the Crown which—
  - (a) is a use of land within the meaning of section 9; and
  - (b) the Minister of Defence certifies is necessary for reasons of national security.
- (3) Section 9(3) does not apply to any work or activity of the Crown within the boundaries of any area of land held or managed under the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act (other than land held for administrative purposes) that—
  - (a) is consistent with a conservation management strategy, conservation management plan, or management plan established under the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act; and
  - (b) does not have a significant adverse effect beyond the boundary of the area of land.

- (3A) Section 9 does not apply to the detention of prisoners in a court cell block that is declared by notice in the *Gazette* to be a part of a corrections prison.
- (4) *[Repealed]*
- (5) An abatement notice or excessive noise direction may be served or issued against an instrument of the Crown, in accordance with this Act, only if—
  - (a) it is a Crown organisation; and
  - (b) the notice or direction is served or issued against the Crown organisation in its own name.
- (6) An enforcement order may be made against an instrument of the Crown, in accordance with this Act, only if—
  - (a) it is a Crown organisation; and
  - (b) a local authority applies for the order; and
  - (c) the order is made against the Crown organisation in its own name.
- (7) Subsections (5) and (6) apply despite section 17(1)(a) of the Crown Proceedings Act 1950.
- (8) An instrument of the Crown may be served with an infringement notice, in accordance with this Act, only if—
  - (a) it is liable to be proceeded against for the alleged offence under subsection (9); and
  - (b) the notice is served against the Crown organisation in its own name.
- (9) An instrument of the Crown may be prosecuted for an offence against this Act only if—
  - (a) it is a Crown organisation; and
  - (b) the offence is alleged to have been committed by the Crown organisation; and
  - (c) the proceedings are commenced—
    - (i) by a local authority or an enforcement officer; and
    - (ii) against the Crown organisation in its own name and the proceedings do not cite the Crown as a defendant; and
    - (iii) in accordance with the Crown Organisations (Criminal Liability) Act 2002.

- (10) However, subsections (8) and (9) are subject to section 8(4) of the Crown Organisations (Criminal Liability) Act 2002 (which provides that a court may not sentence a Crown organisation to pay a fine in respect of an offence against this Act).
- (11) If a Crown organisation is not a body corporate, it is to be treated as if it were a separate legal personality for the purposes of—
- (a) serving or issuing an abatement notice or excessive noise direction against it; and
  - (b) making an enforcement order against it; and
  - (c) serving an infringement notice on it; and
  - (d) enforcing an abatement notice, excessive noise direction, enforcement order, or infringement notice in relation to it.
- (12) Except to the extent and in the manner provided for in subsections (5) to (11), the Crown may not—
- (a) be served or issued with an abatement notice or excessive noise direction; or
  - (b) have an enforcement order made against it; or
  - (c) be served with an infringement notice; or
  - (d) be prosecuted for an offence against this Act.

Section 4(1): substituted, on 1 October 2009, by section 6(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 4(3): substituted, on 7 July 1993, by section 5 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 4(3): amended, on 1 October 2009, by section 6(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 4(3A): inserted, on 8 December 2009, by section 5 of the Corrections (Use of Court Cells) Amendment Act 2009 (2009 No 60).

Section 4(4): repealed, on 7 July 1993, by section 5 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 4(5): substituted, on 1 October 2009, by section 6(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 4(6): added, on 1 October 2009, by section 6(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 4(7): added, on 1 October 2009, by section 6(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 4(8): added, on 1 October 2009, by section 6(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 4(9): added, on 1 October 2009, by section 6(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 4(10): added, on 1 October 2009, by section 6(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 4(11): added, on 1 October 2009, by section 6(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 4(12): added, on 1 October 2009, by section 6(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **4A Application of this Act to ships and aircraft of foreign States**

Except as otherwise expressly provided in any regulations made under this Act, this Act does not apply to any of the following:

- (a) warships of any State other than New Zealand;
- (b) aircraft of the defence forces of any State other than New Zealand;
- (c) any ship owned or operated by any State other than New Zealand, if the ship is being used by that State for wholly governmental (but not including commercial) purposes;
- (d) the master or crew of any warship, aircraft, or ship referred to in paragraphs (a) to (c).

Section 4A: inserted, on 20 August 1998, by section 3 of the Resource Management Amendment Act 1994 (1994 No 105).

## **Part 2 Purpose and principles**

### **5 Purpose**

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
  - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

## **6 Matters of national importance**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- (g) the protection of protected customary rights.

Section 6(f): added, on 1 August 2003, by section 4 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 6(g): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

## **7 Other matters**

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) kaitiakitanga:
- (aa) the ethic of stewardship:
- (b) the efficient use and development of natural and physical resources:
- (ba) the efficiency of the end use of energy:
- (c) the maintenance and enhancement of amenity values:
- (d) intrinsic values of ecosystems:
- (e) *[Repealed]*
- (f) maintenance and enhancement of the quality of the environment:
- (g) any finite characteristics of natural and physical resources:
- (h) the protection of the habitat of trout and salmon:
- (i) the effects of climate change:
- (j) the benefits to be derived from the use and development of renewable energy.

Section 7(aa): inserted, on 17 December 1997, by section 3 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 7(ba): inserted, on 2 March 2004, by section 5(1) of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

Section 7(e): repealed, on 1 August 2003, by section 5 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 7(i): added, on 2 March 2004, by section 5(2) of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

Section 7(j): added, on 2 March 2004, by section 5(2) of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

## 8 Treaty of Waitangi

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

### **Part 3**

#### **Duties and restrictions under this Act**

##### *Land*

#### **9 Restrictions on use of land**

- (1) No person may use land in a manner that contravenes a national environmental standard unless the use—
  - (a) is expressly allowed by a resource consent; or
  - (b) is allowed by section 10; or
  - (c) is an activity allowed by section 10A; or
  - (d) is an activity allowed by section 20A.
- (2) No person may use land in a manner that contravenes a regional rule unless the use—
  - (a) is expressly allowed by a resource consent; or
  - (b) is an activity allowed by section 20A.
- (3) No person may use land in a manner that contravenes a district rule unless the use—
  - (a) is expressly allowed by a resource consent; or
  - (b) is allowed by section 10; or
  - (c) is an activity allowed by section 10A.
- (4) No person may contravene section 176, 178, 193, or 194 unless the person obtains the prior written consent of the requiring authority or the heritage protection authority.
- (5) This section applies to overflying by aircraft only to the extent to which noise emission controls for airports have been prescribed by a national environmental standard or set by a territorial authority.
- (6) This section does not apply to use of the coastal marine area.

Section 9: substituted, on 1 October 2009, by section 7 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **10 Certain existing uses in relation to land protected**

- (1) Land may be used in a manner that contravenes a rule in a district plan or proposed district plan if—
  - (a) either—
    - (i) the use was lawfully established before the rule became operative or the proposed plan was notified; and



- (ii) the effects of the use are the same or similar in character, intensity, and scale to those which existed before the rule became operative or the proposed plan was notified:
  - (b) or—
    - (i) the use was lawfully established by way of a designation; and
    - (ii) the effects of the use are the same or similar in character, intensity, and scale to those which existed before the designation was removed.
- (2) Subject to sections 357 to 358, this section does not apply when a use of land that contravenes a rule in a district plan or a proposed district plan has been discontinued for a continuous period of more than 12 months after the rule in the plan became operative or the proposed plan was notified unless—
  - (a) an application has been made to the territorial authority within 2 years of the activity first being discontinued; and
  - (b) the territorial authority has granted an extension upon being satisfied that—
    - (i) the effect of the extension will not be contrary to the objectives and policies of the district plan; and
    - (ii) the applicant has obtained approval from every person who may be adversely affected by the granting of the extension, unless in the authority's opinion it is unreasonable in all the circumstances to require the obtaining of every such approval.
- (3) This section does not apply if reconstruction or alteration of, or extension to, any building to which this section applies increases the degree to which the building fails to comply with any rule in a district plan or proposed district plan.
- (4) For the avoidance of doubt, this section does not apply to any use of land that is—
  - (a) controlled under section 30(1)(c) (regional control of certain land uses); or
  - (b) restricted under section 12 (coastal marine area); or

- (c) restricted under section 13 (certain river and lake bed controls).
- (5) Nothing in this section limits section 20A (certain existing lawful activities allowed).

(6) *[Repealed]*

Section 10(1): substituted, on 7 July 1993, by section 7(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 10(2): amended, on 10 August 2005, by section 5 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 10(2)(b)(i): amended, on 7 July 1993, by section 7(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 10(3): amended, on 7 July 1993, by section 7(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 10(5): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 10(6): repealed, on 1 October 2009, by section 8 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **10A Certain existing activities allowed**

- (1) In respect of the use of the surface of water in lakes and rivers where, as a result of a rule in a district plan becoming operative, or a rule in a proposed district plan taking legal effect in accordance with section 86B or 149N(8), an activity that formerly was a permitted activity or that otherwise could have been lawfully carried out without a resource consent requires consent, the activity may continue to be carried on after the rule in the plan becomes operative, or the rule in the proposed plan takes legal effect in accordance with section 86B or 149N(8), if—
  - (a) the activity was lawfully established before the rule in the plan became operative or the rule in the proposed plan took legal effect in accordance with section 86B or 149N(8); and
  - (b) the effects of the activity are the same or similar in character, intensity, and scale to those which existed before the rule in the plan became operative or the rule in the proposed plan took legal effect in accordance with section 86B or 149N(8); and

- (c) the person carrying on the activity applies for a resource consent from the appropriate consent authority within 6 months of the rule in the plan becoming operative.
- (2) Any activity to which this section applies, and for which a resource consent has been applied for in accordance with subsection (1)(c), may continue to be carried on until the application has been decided and any appeals have been determined.

Section 10A: inserted, on 7 July 1993, by section 8 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 10A(1): amended, on 1 October 2009, by section 9(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 10A(1): amended, on 1 October 2009, by section 9(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 10A(1): amended, on 1 October 2009, by section 9(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 10A(1): amended, on 1 October 2009, by section 9(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 10A(1)(a): amended, on 1 October 2009, by section 9(5) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 10A(1)(b): amended, on 1 October 2009, by section 9(5) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **10B Certain existing building works allowed**

- (1) Land may be used in a manner that contravenes a rule in a district plan or proposed district plan if the use of land is a building work or intended use of a building (as defined in section 7 of the Building Act 2004) which is deemed to be lawfully established in accordance with subsection (2).
- (2) Subject to subsection (3), the building work or intended use of the building shall be deemed to be lawfully established if—
  - (a) a building consent was issued and any amendments were incorporated in the building consent in accordance with the Building Act 2004 for the building work or intended use of the building before the rule in a district plan or proposed district plan took legal effect in accordance with section 86B or 149N(8); and

- (b) the building work or intended use of the building, as stated on the building consent, would not, at the time the building consent was issued and any amendments were incorporated, have contravened a rule in a district plan or proposed district plan or otherwise could have been carried out without a resource consent.
- (3) Subsection (2) shall not apply if—
  - (a) the building consent is amended (after the rule in the district plan or proposed plan has taken legal effect in accordance with section 86B or 149N(8)) in such a way that the effects of the building work or intended use of a building will no longer be the same or similar in character, intensity, and scale as before the amendment; or
  - (b) the building consent has lapsed or is cancelled, but the issuing under the Building Act 2004 of a code compliance certificate in respect of the building work shall not, for the purposes of this section, be deemed to have cancelled the building consent for that work; or
  - (c) a code compliance certificate for the building work has not been issued in accordance with the Building Act 2004 within 2 years after the rule in the district plan or proposed district plan took legal effect in accordance with section 86B or 149N(8) or within such further period as the territorial authority may allow upon being satisfied that reasonable progress has been made towards completion of the building work within that 2-year period.
- (4) Section 10(4) and (5) apply to this section.

Section 10B: inserted, on 2 September 1996, by section 4 of the Resource Management Amendment Act 1996 (1996 No 160).

Section 10B(1): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 10B(2)(a): amended, on 1 October 2009, by section 10(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 10B(2)(a): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 10B(3)(a): amended, on 1 October 2009, by section 10(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 10B(3)(b): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 10B(3)(c): amended, on 1 October 2009, by section 10(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 10B(3)(c): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 10B(4): substituted, on 1 October 2009, by section 10(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **11 Restrictions on subdivision of land**

- (1) No person may subdivide land, within the meaning of section 218, unless the subdivision is—
- (a) both, first, expressly allowed by a national environmental standard, a rule in a district plan as well as a rule in a proposed district plan for the same district (if there is one), or a resource consent and, second, shown on one of the following:
    - (i) a survey plan, as defined in paragraph (a)(i) of the definition of survey plan in section 2(1), deposited under Part 10 by the Registrar-General of Land; or
    - (ii) a survey plan, as defined in paragraph (a)(ii) of the definition of survey plan in section 2(1), approved as described in section 228 by the Chief Surveyor; or
    - (iii) a survey plan, as defined in paragraph (b) of the definition of survey plan in section 2(1), deposited under Part 10 by the Registrar-General of Land; or
  - (b) effected by the acquisition, taking, transfer, or disposal of part of an allotment under the Public Works Act 1981 (except that, in the case of the disposition of land under the Public Works Act 1981, each existing separate parcel of land shall, unless otherwise provided by that Act, be disposed of without further division of that parcel of land); or
  - (c) effected by the establishment, change, or cancellation of a reserve under section 338 of Te Ture Whenua Maori Act 1993; or

- (ca) effected by a transfer under section 23 of the State-Owned Enterprises Act 1986 or a resumption under section 27D of that Act; or
  - (cb) effected by any vesting in or transfer or gift of any land to the Crown or any local authority or administering body (as defined in section 2 of the Reserves Act 1977) for the purposes (other than administrative purposes) of the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act; or
  - (cc) effected by transfer or gift of any land to the New Zealand Historic Places Trust or the Queen Elizabeth the Second National Trust for the purposes of the Historic Places Act 1993 or the Queen Elizabeth the Second National Trust Act 1977; or
  - (d) effected by any transfer, exchange, or other disposition of land made by an order under subpart 3 of Part 6 of the Property Law Act 2007 (which relates to the granting of access to landlocked land).
- (2) Subsection (1) does not apply in respect of Maori land within the meaning of Te Ture Whenua Maori Act 1993 unless that Act otherwise provides.

Section 11(1)(a): substituted, on 1 October 2009, by section 11 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 11(1)(c): amended, on 7 July 1993, by section 9(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 11(1)(c): amended, on 1 July 1993, pursuant to section 362(2) of Te Ture Whenua Maori Act 1993 (1993 No 4).

Section 11(1)(ca): inserted, on 7 July 1993, by section 9(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 11(1)(cb): inserted, on 7 July 1993, by section 9(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 11(1)(cc): inserted, on 7 July 1993, by section 9(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 11(1)(d): amended, on 1 January 2008, by section 364(1) of the Property Law Act 2007 (2007 No 91).

Section 11(2): amended, on 7 July 1993, by section 9(4) of the Resource Management Amendment Act 1993 (1993 No 65).

*Coastal marine area*

**12 Restrictions on use of coastal marine area**

- (1) No person may, in the coastal marine area,—
- (a) reclaim or drain any foreshore or seabed; or
  - (b) erect, reconstruct, place, alter, extend, remove, or demolish any structure or any part of a structure that is fixed in, on, under, or over any foreshore or seabed; or
  - (c) disturb any foreshore or seabed (including by excavating, drilling, or tunnelling) in a manner that has or is likely to have an adverse effect on the foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal); or
  - (d) deposit in, on, or under any foreshore or seabed any substance in a manner that has or is likely to have an adverse effect on the foreshore or seabed; or
  - (e) destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on plants or animals or their habitat; or
  - (f) introduce or plant any exotic or introduced plant in, on, or under the foreshore or seabed; or
  - (g) destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on historic heritage—
- unless expressly allowed by a national environmental standard, a rule in a regional coastal plan as well as a rule in a proposed regional coastal plan for the same region (if there is one), or a resource consent.
- (2) No person may, unless expressly allowed by a national environmental standard, a rule in a regional coastal plan or in any proposed regional coastal plan for the same region, or a resource consent,—
- (a) occupy any part of the common marine and coastal area; or
  - (b) remove any sand, shingle, shell, or other natural material from that area.

- (3) Without limiting subsection (1), no person may carry out any activity—
- (a) in, on, under, or over any coastal marine area; or
  - (b) in relation to any natural and physical resources contained within any coastal marine area,—
- in a manner that contravenes a national environmental standard, a rule in a regional coastal plan, or a rule in a proposed regional coastal plan for the same region (if there is one) unless the activity is expressly allowed by a resource consent or allowed by section 20A (certain existing lawful activities allowed).
- (4) In this Act,—
- (a) *[Repealed]*
  - (b) **remove any sand, shingle, shell, or other natural material** means to take any of that material in such quantities or in such circumstances that, but for the national environmental standard or the rule in the regional coastal plan or the holding of a resource consent, a licence or profit à prendre to do so would be necessary.
- (5) This section applies to overflying by aircraft only to the extent to which noise emission controls for airports within the coastal marine area have been prescribed by a national environmental standard or set by a regional council.
- (6) This section shall not apply to anything to which section 15A or 15B applies.

Section 12(1): amended, on 1 October 2009, by section 12(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 12(1): amended, on 7 July 1993, by section 10(1)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 12(1): amended, on 7 July 1993, by section 10(1)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 12(1)(f): amended, on 1 August 2003, by section 6 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 12(1)(g): added, on 1 August 2003, by section 6 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 12(2): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 12(3): amended, on 1 October 2009, by section 12(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).



Section 12(3): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 12(4): amended, on 17 December 1997, by section 4(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 12(4): amended, on 7 July 1993, by section 10(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 12(4)(a): repealed, on 1 January 2005, by section 5 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 12(4)(b): amended, on 1 October 2009, by section 12(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 12(4)(b): amended, on 7 July 1993, by section 10(5) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 12(5): substituted, on 1 October 2009, by section 12(5) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 12(6): added, on 20 August 1998, by section 4 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 12(6): amended, on 20 August 1998, by section 4(4) of the Resource Management Amendment Act 1997 (1997 No 104).

## **12A Restrictions on aquaculture activities in coastal marine area and on other activities in aquaculture management areas**

- (1) No person may occupy a coastal marine area for the purpose of an aquaculture activity—
  - (a) except in an aquaculture management area provided for in a regional coastal plan; or
  - (b) if that part of the coastal marine area is in the common marine and coastal area, unless expressly authorised by a coastal permit.
- (1A) No person may apply for a coastal permit to occupy a coastal marine area for the purpose of an aquaculture activity except in an aquaculture management area in a regional coastal plan.
- (2) In an aquaculture management area, any other activity requiring occupation may be undertaken only as—
  - (a) a restricted discretionary activity; or
  - (b) a discretionary activity; or
  - (c) a non-complying activity.
- (3) *[Repealed]*

Section 12A: inserted, on 1 January 2005, by section 6 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 12A(1): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 12A(1A): inserted, on 28 September 2008, by section 5(1) of the Resource Management Amendment Act 2008 (2008 No 95).

Section 12A(3): repealed, on 28 September 2008, by section 5(2) of the Resource Management Amendment Act 2008 (2008 No 95).

### **12B Continuation of coastal permit for aquaculture activities if aquaculture management area ceases to exist**

To avoid doubt, a coastal permit for aquaculture activities does not expire because the area or part of the area that the permit relates to subsequently ceases to be in an aquaculture management area.

Section 12B: inserted, on 1 January 2005, by section 6 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### *River and lake beds*

### **13 Restriction on certain uses of beds of lakes and rivers**

- (1) No person may, in relation to the bed of any lake or river,—
  - (a) use, erect, reconstruct, place, alter, extend, remove, or demolish any structure or part of any structure in, on, under, or over the bed; or
  - (b) excavate, drill, tunnel, or otherwise disturb the bed; or
  - (c) introduce or plant any plant or any part of any plant (whether exotic or indigenous) in, on, or under the bed; or
  - (d) deposit any substance in, on, or under the bed; or
  - (e) reclaim or drain the bed—
 unless expressly allowed by a national environmental standard, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.
- (2) No person may do an activity described in subsection (2A) in a manner that contravenes a national environmental standard or a regional rule unless the activity—
  - (a) is expressly allowed by a resource consent; or
  - (b) is an activity allowed by section 20A.
- (2A) The activities are—
  - (a) to enter onto or pass across the bed of a lake or river:

- (b) to damage, destroy, disturb, or remove a plant or a part of a plant, whether exotic or indigenous, in, on, or under the bed of a lake or river:
  - (c) to damage, destroy, disturb, or remove the habitats of plants or parts of plants, whether exotic or indigenous, in, on, or under the bed of a lake or river:
  - (d) to damage, destroy, disturb, or remove the habitats of animals in, on, or under the bed of a lake or river.
- (3) This section does not apply to any use of land in the coastal marine area.
- (4) Nothing in this section limits section 9.

Section 13 heading: amended, on 7 July 1993, by section 11 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 13(1): substituted, on 7 July 1993, by section 11 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 13(1): amended, on 1 October 2009, by section 13(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 13(2): substituted, on 1 October 2009, by section 13(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 13(2A): inserted, on 1 October 2009, by section 13(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### *Water*

#### **14 Restrictions relating to water**

- (1) No person may take, use, dam, or divert any open coastal water, or take or use any heat or energy from any open coastal water, in a manner that contravenes a national environmental standard or a regional rule unless the activity—
  - (a) is expressly allowed by a resource consent; or
  - (b) is an activity allowed by section 20A.
- (2) No person may take, use, dam, or divert any of the following, unless the taking, using, damming, or diverting is allowed by subsection (3):
  - (a) water other than open coastal water; or
  - (b) heat or energy from water other than open coastal water;or

- (c) heat or energy from the material surrounding geothermal water.
- (3) A person is not prohibited by subsection (2) from taking, using, damming, or diverting any water, heat, or energy if—
  - (a) the taking, using, damming, or diverting is expressly allowed by a national environmental standard, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent; or
  - (b) in the case of fresh water, the water, heat, or energy is required to be taken or used for—
    - (i) an individual's reasonable domestic needs; or
    - (ii) the reasonable needs of an individual's animals for drinking water,—and the taking or use does not, or is not likely to, have an adverse effect on the environment; or
  - (c) in the case of geothermal water, the water, heat, or energy is taken or used in accordance with tikanga Maori for the communal benefit of the tangata whenua of the area and does not have an adverse effect on the environment; or
  - (d) in the case of coastal water (other than open coastal water), the water, heat, or energy is required for an individual's reasonable domestic or recreational needs and the taking, use, or diversion does not, or is not likely to, have an adverse effect on the environment; or
  - (e) the water is required to be taken or used for firefighting purposes.

Section 14(1): substituted, on 1 October 2009, by section 14(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 14(2): substituted, on 1 October 2009, by section 14(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 14(3): amended, on 1 October 2009, by section 14(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 14(3)(a): amended, on 1 October 2009, by section 14(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Discharges*

**15 Discharge of contaminants into environment**

- (1) No person may discharge any—
- (a) contaminant or water into water; or
  - (b) contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or
  - (c) contaminant from any industrial or trade premises into air; or
  - (d) contaminant from any industrial or trade premises onto or into land—
- unless the discharge is expressly allowed by a national environmental standard or other regulations, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent.
- (2) No person may discharge a contaminant into the air, or into or onto land, from a place or any other source, whether moveable or not, in a manner that contravenes a national environmental standard unless the discharge—
- (a) is expressly allowed by other regulations; or
  - (b) is expressly allowed by a resource consent; or
  - (c) is an activity allowed by section 20A.
- (2A) No person may discharge a contaminant into the air, or into or onto land, from a place or any other source, whether moveable or not, in a manner that contravenes a regional rule unless the discharge—
- (a) is expressly allowed by a national environmental standard or other regulations; or
  - (b) is expressly allowed by a resource consent; or
  - (c) is an activity allowed by section 20A.
- (3) This section shall not apply to anything to which section 15A or section 15B applies.

Section 15(1): amended, on 1 October 2009, by section 15(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 15(2): substituted, on 1 October 2009, by section 15(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 15(2A): inserted, on 1 October 2009, by section 15(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 15(3): added, on 20 August 1998, by section 5 of the Resource Management Amendment Act 1994 (1994 No 105).

**15A Restrictions on dumping and incineration of waste or other matter in coastal marine area**

- (1) No person may, in the coastal marine area,—
- (a) dump any waste or other matter from any ship, aircraft, or offshore installation; or
  - (b) incinerate any waste or other matter in any marine incineration facility—
- unless the dumping or incineration is expressly allowed by a resource consent.
- (2) No person may dump, in the coastal marine area, any ship, aircraft, or offshore installation unless expressly allowed to do so by a resource consent.
- (3) Nothing in this section permits the dumping of radioactive waste or radioactive matter (to which section 15C applies) or any discharge of a harmful substance that would contravene section 15B.

Section 15A: inserted, on 20 August 1998, by section 6 of the Resource Management Amendment Act 1994 (1994 No 105).

**15B Discharge of harmful substances from ships or offshore installations**

- (1) No person may, in the coastal marine area, discharge a harmful substance or contaminant, from a ship or offshore installation into water, onto or into land, or into air, unless—
- (a) the discharge is permitted or controlled by regulations made under this Act, a rule in a regional coastal plan, proposed regional coastal plan, regional plan, proposed regional plan, or a resource consent; or
  - (b) after reasonable mixing, the harmful substance or contaminant discharged (either by itself or in combination with any other discharge) is not likely to give rise to all or any of the following effects in the receiving waters:

- (i) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:
    - (ii) any conspicuous change of colour or visual clarity:
    - (iii) any emission of objectionable odour:
    - (iv) any significant adverse effects on aquatic life; or
  - (c) the harmful substance or contaminant, when discharged into air, is not likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have a significant adverse effect on the environment.
- (2) No person may, in the coastal marine area, discharge water into water from any ship or offshore installation, unless—
- (a) the discharge is permitted or controlled by regulations made under this Act, a rule in a regional coastal plan, proposed regional coastal plan, regional plan, proposed regional plan, or a resource consent; or
  - (b) after reasonable mixing, the water discharged is not likely to give rise to any significant adverse effects on aquatic life.
- (3) Where regulations are made under this Act permitting or controlling a discharge to which subsections (1) or (2) apply, no rule can be included in a regional coastal plan, proposed regional coastal plan, regional plan, or proposed regional plan, or a resource consent granted relating to that discharge unless the regulations provide otherwise; and regulations may be made prohibiting the making of rules or the granting of resource consents for discharges.
- (4) No person may discharge a harmful substance or contaminant in reliance upon subsection (1)(b) or (c) or subsection (2)(b) if a regulation made under this Act, a rule, or a resource consent applies to that discharge; and regulations or rules may be made prohibiting a discharge which would otherwise be permitted in accordance with subsection (1)(b) or (c) or subsection (2)(b).
- (5) A discharge authorised by subsection (1) or subsection (2), regulations made under this Act, a rule, or a resource consent may, despite section 7 of the Biosecurity Act 1993, be prohib-

ited or controlled by that Act to exclude, eradicate, or effectively manage pests or unwanted organisms.

Section 15B: substituted, on 20 August 1998, by section 6 of the Resource Management Amendment Act 1997 (1997 No 104).

**15C Prohibitions in relation to radioactive waste or other radioactive matter and other waste in coastal marine area**

- (1) Notwithstanding anything to the contrary in this Act, no person may, in the coastal marine area,—
- (a) dump from any ship, aircraft, or offshore installation any radioactive waste or other radioactive matter; or
  - (b) store any radioactive waste or other radioactive matter or toxic or hazardous waste on or in any land or water.
- (2) In this section,—

**radioactive waste or other radioactive matter** has the same meaning as in section 257 of the Maritime Transport Act 1994

**toxic or hazardous waste** means any waste or other matter prescribed as toxic or hazardous waste by regulations.

Section 15C: inserted, on 20 August 1998, by section 6 of the Resource Management Amendment Act 1994 (1994 No 105).

*Noise*

**16 Duty to avoid unreasonable noise**

- (1) Every occupier of land (including any premises and any coastal marine area), and every person carrying out an activity in, on, or under a water body or the coastal marine area, shall adopt the best practicable option to ensure that the emission of noise from that land or water does not exceed a reasonable level.
- (2) A national environmental standard, plan, or resource consent made or granted for the purposes of any of sections 9, 12, 13, 14, 15, 15A, and 15B may prescribe noise emission standards, and is not limited in its ability to do so by subsection (1).

Section 16(1): amended, on 7 July 1993, by section 14 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 16(2): substituted, on 1 October 2009, by section 16 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).



*Adverse effects*

**17 Duty to avoid, remedy, or mitigate adverse effects**

- (1) Every person has a duty to avoid, remedy, or mitigate any adverse effect on the environment arising from an activity carried on by or on behalf of the person, whether or not the activity is carried on in accordance with—
  - (a) any of sections 10, 10A, 10B, and 20A; or
  - (b) a national environmental standard, a rule, a resource consent, or a designation.
- (2) The duty referred to in subsection (1) is not of itself enforceable against any person, and no person is liable to any other person for a breach of that duty.
- (3) Notwithstanding subsection (2), an enforcement order or abatement notice may be made or served under Part 12 to—
  - (a) require a person to cease, or prohibit a person from commencing, anything that, in the opinion of the Environment Court or an enforcement officer, is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment; or
  - (b) require a person to do something that, in the opinion of the Environment Court or an enforcement officer, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by, or on behalf of, that person.
- (4) Subsection (3) is subject to section 319(2) (which specifies when an Environment Court shall not make an enforcement order).

Section 17(1): substituted, on 1 October 2009, by section 17 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 17(3)(a): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 17(3)(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 17(4): added, on 7 July 1993, by section 15(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 17(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

*Recognised customary activities**[Repealed]*

Heading: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**17A Recognised customary activity may be exercised in accordance with any controls***[Repealed]*

Section 17A: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**17B Adverse effects assessment***[Repealed]*

Section 17B: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

*Emergencies***18 Possible defence in cases of unforeseen emergencies**

- (1) Any person who is prosecuted under section 338 for an offence arising from any contravention of any of sections 9, 11, 12, 13, 14, 15, 15A, and 15B may raise any applicable defence that is referred to in section 341 or section 341A or section 341B.
- (2) No person may be prosecuted for acting in accordance with section 330 (which relates to certain activities undertaken in an emergency).

Section 18(1): substituted, on 20 August 1998, by section 8 of the Resource Management Amendment Act 1994 (1994 No 105).

*Effect of certain changes to plans**[Repealed]*

Heading: repealed, on 1 October 2009, by section 18 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**19 Certain rules in proposed plans to be operative***[Repealed]*

Section 19: repealed, on 1 October 2009, by section 18 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **20 Certain rules in proposed plans not to have effect**

*[Repealed]*

Section 20: repealed, on 1 October 2009, by section 18 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### *Certain existing lawful activities allowed*

Heading: inserted, on 1 October 2009, by section 19 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **20A Certain existing lawful activities allowed**

- (1) If, as a result of a rule in a proposed regional plan taking legal effect in accordance with section 86B or 149N(8), an activity requires a resource consent, the activity may continue until the rule becomes operative if,—
  - (a) before the rule took legal effect in accordance with section 86B or 149N(8), the activity—
    - (i) was a permitted activity or otherwise could have been lawfully carried on without a resource consent; and
    - (ii) was lawfully established; and
  - (b) the effects of the activity are the same or similar in character, intensity, and scale to the effects that existed before the rule took legal effect in accordance with section 86B or 149N(8); and
  - (c) the activity has not been discontinued for a continuous period of more than 6 months (or a longer period fixed by a rule in the proposed regional plan in any particular case or class of case by the regional council that is responsible for the proposed plan) since the rule took legal effect in accordance with section 86B or 149N(8).
- (2) If, as a result of a rule in a regional plan becoming operative, an activity requires a resource consent, the activity may continue after the rule becomes operative if,—
  - (a) before the rule became operative, the activity—
    - (i) was a permitted activity or allowed to continue under subsection (1) or otherwise could have been lawfully carried on without a resource consent; and
    - (ii) was lawfully established; and

- (b) the effects of the activity are the same or similar in character, intensity, and scale to the effects that existed before the rule became operative; and
- (c) the person carrying on the activity has applied for a resource consent from the appropriate consent authority within 6 months after the date the rule became operative and the application has not been decided or any appeals have not been determined.

Section 20A: substituted, on 1 August 2003, by section 8 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 20A(1): amended, on 1 October 2009, by section 20(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 20A(1)(a): amended, on 1 October 2009, by section 20(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 20A(1)(b): amended, on 1 October 2009, by section 20(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 20A(1)(c): amended, on 1 October 2009, by section 20(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### *Miscellaneous provisions*

## **21 Avoiding unreasonable delay**

Every person who exercises or carries out functions, powers, or duties, or is required to do anything, under this Act for which no time limits are prescribed shall do so as promptly as is reasonable in the circumstances.

## **22 Duty to give certain information**

- (1) This section applies when an enforcement officer has reasonable grounds to believe that a person (**person A**) is breaching or has breached any of the obligations under this Part.
- (2) The enforcement officer may direct person A to give the officer the following information:
  - (a) if person A is a natural person, his or her full name, address, and date of birth;
  - (b) if person A is not a natural person, person A's full name and address.

- (3) The enforcement officer may also direct person A to give the officer the following information about a person (**person B**) on whose behalf person A is breaching or has breached the obligations under this Part:
- (a) if person B is a natural person, his or her full name, address, and date of birth:
  - (b) if person B is not a natural person, person B's full name and address.

Section 22: substituted, on 1 October 2009, by section 21 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**23 Other legal requirements not affected**

- (1) Compliance with this Act does not remove the need to comply with all other applicable Acts, regulations, bylaws, and rules of law.
- (2) The duties and restrictions described in this Part shall only be enforceable against any person through the provisions of this Act; and no person shall be liable to any other person for a breach of any such duty or restriction except in accordance with the provisions of this Act.
- (3) Nothing in subsection (2) limits or affects any right of action which any person may have independently of the provisions of this Act.

**Part 4**

**Functions, powers, and duties of central  
and local government**

*Functions, powers, and duties of Ministers*

**24 Functions of Minister for the Environment**

The Minister for the Environment shall have the following functions under this Act:

- (a) the recommendation of the issue of national policy statements under section 52:
- (b) the recommendation of the making of national environmental standards:
- (c) to decide whether to intervene in a matter, or to make a direction for a matter that is or is part of a proposal of national significance, under Part 6AA:

- (d) the recommendation of the approval of an applicant as a requiring authority under section 167 or a heritage protection authority under section 188:
- (e) the recommendation of the issue of water conservation orders under section 214:
- (f) the monitoring of the effect and implementation of this Act (including any regulations in force under it), national policy statements, and water conservation orders:
- (g) the monitoring of the relationship between the functions, powers, and duties of central government and local government under this Part:
- (ga) the monitoring and investigation, in such manner as the Minister thinks fit, of any matter of environmental significance:
- (h) the consideration and investigation of the use of economic instruments (including charges, levies, other fiscal measures, and incentives) to achieve the purpose of this Act:
- (i) any other functions specified in this Act.

Section 24(b): amended, on 10 August 2005, by section 6(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 24(c): substituted, on 1 October 2009, by section 22 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 24(g): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 24(ga): inserted, on 7 July 1993, by section 17 of the Resource Management Amendment Act 1993 (1993 No 65).

#### **24A Power of Minister for the Environment to investigate and make recommendations**

The Minister for the Environment may—

- (a) investigate the exercise or performance by a local authority of any of its functions, powers, or duties under this Act or regulations under this Act; and
- (b) make recommendations to the local authority on its exercise or performance of those functions, powers, or duties; and

- (c) investigate the failure or omission by a local authority to exercise or perform any of its functions, powers, or duties under this Act or regulations under this Act; and
- (d) make recommendations to the local authority on its failure or omission to exercise or perform those functions, powers, or duties; and
- (e) take action under section 25 or section 25A if the local authority's failure or omission to act on a recommendation gives the Minister grounds to take action under one or both of those sections.

Section 24A: inserted, on 10 August 2005, by section 7 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 24A(a): amended, on 1 October 2009, by section 23 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 24A(c): amended, on 1 October 2009, by section 23 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **25 Residual powers of Minister for the Environment**

- (1) Where any local authority is not exercising or performing any of its functions, powers, or duties under this Act to the extent that the Minister for the Environment considers necessary to achieve the purpose of this Act, the Minister may appoint, on such terms and conditions as the Minister thinks fit, 1 or more persons (including any officer of the public service) to exercise or perform all or any of those functions, powers, or duties in place of the local authority.
- (2) The Minister shall not make an appointment under subsection (1) until—
  - (a) the local authority has been given written notice specifying the reasons why the Minister proposes to make the appointment; and
  - (b) the local authority has a reasonable opportunity to satisfy the Minister that it has not failed to exercise or perform any of its functions, powers, or duties to the extent necessary to achieve the purpose of this Act, and having not succeeded in so satisfying the Minister, has failed to take proper steps within a time specified in the notice

(being not less than 20 working days after the date of the notice) to remedy the defaults complained of.

- (3) Any person appointed under subsection (1) to exercise or perform the functions, powers, or duties of a local authority under this Act may do so as if the person were the local authority, and the provisions of this Act shall apply accordingly.
- (4) All costs, charges, and expenses incurred by the Minister for the purposes of this section, or by a person appointed by the Minister under this section in exercising or performing functions, powers, or duties of a local authority, shall be recoverable from the local authority as a debt due to the Crown or may be deducted from any money payable to the local authority by the Crown.

**25A Minister may direct preparation of plan, change, or variation**

- (1) The Minister for the Environment—
  - (a) may direct a regional council—
    - (i) to prepare a regional plan that addresses a resource management issue relating to a function in section 30; or
    - (ii) to prepare a change to its regional plan that addresses the issue; or
    - (iii) to prepare a variation to its proposed regional plan that addresses the issue; and
  - (b) may direct the council, in preparing the plan, change, or variation, to deal with the whole or a specified part of the council's region; and
  - (c) must, in giving a direction, specify a reasonable period within which the plan, change, or variation must be notified.
- (2) The Minister—
  - (a) may direct a territorial authority—
    - (i) to prepare a change to its district plan that addresses a resource management issue relating to a function in section 31; or
    - (ii) to prepare a variation to its proposed district plan that addresses the issue; and



- (b) must, in giving a direction, specify a reasonable period within which the change or variation must be notified.

Section 25A: inserted, on 10 August 2005, by section 8 of the Resource Management Amendment Act 2005 (2005 No 87).

**25B Ministers may direct commencement of review**

- (1) The Minister may direct a regional council to commence a review of the whole or any part of its regional plan (except its regional coastal plan) and, if he or she does so, must specify a reasonable period within which the review must commence.
- (2) The Minister of Conservation may direct a regional council to commence a review of the whole or any part of its regional coastal plan and, if he or she does so, must specify a reasonable period within which the review must commence.
- (3) The Minister may direct a territorial authority to commence a review of the whole or any part of its district plan and, if he or she does so, must specify a reasonable period within which the review must commence.
- (4) For the purposes of subsections (1) to (3), section 79(5) to (9) apply to the review with any necessary modification.

Section 25B: inserted, on 1 October 2009, by section 24 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**26 Minister may make grants and loans**

- (1) The Minister for the Environment may make grants and loans on such conditions as he or she thinks fit to any person to assist in achieving the purpose of this Act.
- (2) All money spent or advanced by the Minister under this section shall be paid out of money appropriated by Parliament for the purpose.
- (3) All money received by the Minister under this Act shall be paid into a Crown Bank Account or such other account as may be approved by the Minister of Finance.

Section 26(3): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

**27 Minister may require local authorities to supply information**

- (1) The Minister for the Environment may require the bodies described in subsection (2) to supply the information described in subsection (3).
- (2) The bodies are—
  - (a) a local authority; and
  - (b) a network utility operator approved as a requiring authority; and
  - (c) a body corporate approved as a heritage protection authority.
- (3) The information is information to which all the following apply:
  - (a) it is about the body's exercise of any of its functions, powers, or duties under this Act; and
  - (b) it is held by the body; and
  - (c) it may reasonably be required by the Minister.
- (4) The Minister must require the information in a notice that—
  - (a) is in writing; and
  - (b) is dated.
- (5) The body—
  - (a) must supply the Minister with the information within—
    - (i) 20 working days of the date of the notice; or
    - (ii) a longer time set by the Minister; and
  - (b) must not charge the Minister for the supply.

Section 27: substituted, on 10 August 2005, by section 9 of the Resource Management Amendment Act 2005 (2005 No 87).

**28 Functions of Minister of Conservation**

The Minister of Conservation shall have the following functions under this Act:

- (a) the preparation and recommendation of New Zealand coastal policy statements under section 57:
- (b) the approval of regional coastal plans in accordance with Schedule 1:
- (c) *[Repealed]*
- (d) the monitoring of the effect and implementation of New Zealand coastal policy statements and coastal permits for restricted coastal activities.

(e) *[Repealed]*

Section 28(c): repealed, on 1 October 2009, by section 25(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 28(d): substituted, on 7 July 1993, by section 19(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 28(d): amended, on 1 October 2009, by section 25(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 28(e): repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**28A Regional council must supply information to Minister of Conservation**

- (1) The Minister of Conservation may, if it is reasonable to do so, require a regional council to supply information about the regional council's monitoring of—
  - (a) a coastal permit relating to its region; or
  - (b) its regional coastal plan; or
  - (c) the exercise of a protected customary right in its region.
- (2) The Minister of Conservation must request the required information by giving a written and dated notice to the regional council.
- (3) The council must supply the information to the Minister of Conservation within—
  - (a) 20 working days of the date of the notice; or
  - (b) a longer time set by the Minister of Conservation.
- (4) The council must not charge for supplying the information.

Section 28A: substituted, on 1 October 2009, by section 26 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 28A(1)(c): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**29 Delegation of functions by Ministers**

- (1) Any Minister of the Crown may, either generally or particularly, delegate to the chief executive of that Minister's department in accordance with section 28 of the State Sector Act 1988, any of that Minister's functions, powers, or duties under this Act other than the following:
  - (a) certifying any work or activity under section 4:

- (b) appointing persons to exercise powers or perform functions or duties in place of a local authority under section 25:
- (c) recommending the making of a national environmental standard under section 44:
- (d) recommending the approval, change, or revocation of a national policy statement or a New Zealand coastal policy statement under section 52, 53, or 57:
- (e) the following functions, powers, and duties under Part 6AA:
  - (i) deciding whether to make a direction under section 142(2) or 147(1) in relation to a matter that is or is part of a proposal of national significance:
  - (ii) appointing a board of inquiry under section 149J to consider a matter for which a direction has been made under section 142(2) or 147(1)(a):
  - (iii) extending the time by which a board of inquiry must produce a final report on a matter for which a direction has been made under section 142(2) or 147(1)(a)
  - (iv) deciding whether to intervene in a matter under section 149ZA:
  - (v) deciding under section 149ZC whether to notify an application or notice of requirement to which section 149ZB applies:
- (f) recommending the making of an Order in Council under section 150C:
- (g) recommending the making of an Order in Council under section 165O:
- (ga) *[Repealed]*
- (h) approving an applicant as a requiring authority under section 167:
- (i) approving an applicant as a heritage protection authority under section 188:
- (j) recommending the issue or amendment of a water conservation order under section 214 or 216:
- (k) recommending the appointment of an Environment Judge or alternate Environment Judge under section 250:

- (l) recommending the appointment of the Principal Environment Judge under section 251:
  - (m) recommending the appointment of an Environment Commissioner or Deputy Environment Commissioner under section 254:
  - (n) recommending the making of regulations under section 360:
  - (o) approving a regional coastal plan under clause 19 of Schedule 1:
  - (p) *[Repealed]*
  - (q) this power of delegation.
- (2) A chief executive may, in accordance with section 41 of the State Sector Act 1988, subdelegate any function, power, or duty delegated to him or her by a Minister under section 28 of that Act.
- (3) Any delegation or subdelegation made under this section may be revoked in accordance with section 29 or section 42 of the State Sector Act 1988, as the case may be.
- (4) The Minister may, in writing, delegate to the Environmental Protection Authority his or her functions, powers, and duties under Part 6AA and sections 357B to 357D except the following:
  - (a) deciding whether to make a direction under section 142(2) or 147(1) in relation to a matter that is or is part of a proposal of national significance:
  - (b) appointing a board of inquiry under section 149J to consider a matter for which a direction has been made under section 142(2) or 147(1)(a):
  - (c) extending the time by which a board of inquiry must produce a final report on a matter for which a direction has been made under section 142(2) or 147(1)(a):
  - (d) deciding whether to intervene in a matter under section 149ZA:
  - (e) deciding under section 149ZC whether to notify an application or notice of requirement to which section 149ZB applies.
- (5) A delegation under subsection (4)—

- (a) is revocable at will, but the revocation does not take effect until it is communicated in writing to the EPA; and
- (b) does not prevent the Minister from performing the functions or duties, or exercising the powers, concerned.

Section 29(1)(a): substituted, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(b): substituted, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(c): substituted, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(d): substituted, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(e): substituted, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(f): substituted, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(g): substituted, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(ga): repealed, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(h): substituted, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(i): added, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(j): added, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(k): added, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(l): added, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(m): added, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(n): added, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(o): added, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(1)(p): repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 29(1)(q): added, on 1 October 2009, by section 27(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(4): added, on 1 October 2009, by section 27(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 29(5): added, on 1 October 2009, by section 27(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Functions, powers, and duties of local  
authorities*

**30 Functions of regional councils under this Act**

- (1) Every regional council shall have the following functions for the purpose of giving effect to this Act in its region:
- (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region:
  - (b) the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance:
  - (c) the control of the use of land for the purpose of—
    - (i) soil conservation:
    - (ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:
    - (iii) the maintenance of the quantity of water in water bodies and coastal water:
    - (iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:
    - (iv) the avoidance or mitigation of natural hazards:

- (v) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:
- (ca) the investigation of land for the purposes of identifying and monitoring contaminated land:
- (d) in respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—
  - (i) land and associated natural and physical resources:
  - (ii) the occupation of space in, and the extraction of sand, shingle, shell, or other natural material from, the coastal marine area, to the extent that it is within the common marine and coastal area:
  - (iii) the taking, use, damming, and diversion of water:
  - (iv) discharges of contaminants into or onto land, air, or water and discharges of water into water:
  - (iva) the dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:
  - (v) any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:
  - (vi) the emission of noise and the mitigation of the effects of noise:
  - (vii) activities in relation to the surface of water:
- (e) the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body, including—
  - (i) the setting of any maximum or minimum levels or flows of water:
  - (ii) the control of the range, or rate of change, of levels or flows of water:
  - (iii) the control of the taking or use of geothermal energy:



- (f) the control of discharges of contaminants into or onto land, air, or water and discharges of water into water:
  - (fa) if appropriate, the establishment of rules in a regional plan to allocate any of the following:
    - (i) the taking or use of water (other than open coastal water):
    - (ii) the taking or use of heat or energy from water (other than open coastal water):
    - (iii) the taking or use of heat or energy from the material surrounding geothermal water:
    - (iv) the capacity of air or water to assimilate a discharge of a contaminant:
  - (fb) if appropriate, and in conjunction with the Minister of Conservation,—
    - (i) the establishment of rules in a regional coastal plan to allocate the taking or use of heat or energy from open coastal water:
    - (ii) the establishment of a rule in a regional coastal plan to allocate space in a coastal marine area under Part 7A:
  - (g) in relation to any bed of a water body, the control of the introduction or planting of any plant in, on, or under that land, for the purpose of—
    - (i) soil conservation:
    - (ii) the maintenance and enhancement of the quality of water in that water body:
    - (iii) the maintenance of the quantity of water in that water body:
    - (iv) the avoidance or mitigation of natural hazards:
  - (ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:
  - (gb) the strategic integration of infrastructure with land use through objectives, policies, and methods:
  - (h) any other functions specified in this Act.
- (2) A regional council and the Minister of Conservation may perform the functions specified in subsection (1)(d) to control the harvesting or enhancement of aquatic organisms to avoid, remedy, or mitigate—

- (a) the effects on fishing and fisheries resources of occupying a coastal marine area for the purpose of aquaculture activities;
  - (b) the effects on fishing and fisheries resources of aquaculture activities.
- (3) However, a regional council and the Minister of Conservation must not perform the functions specified in subsection (1)(d)(i), (ii), or (vii) to control the harvesting or enhancement of aquatic organisms for the purpose of conserving, using, enhancing, or developing any fisheries resources controlled under the Fisheries Act 1996.
- (4) A rule to allocate a natural resource established by a regional council in a plan under subsection (1)(fa) or (fb) may allocate the resource in any way, subject to the following:
  - (a) the rule may not, during the term of an existing resource consent, allocate the amount of a resource that has already been allocated to the consent; and
  - (b) nothing in paragraph (a) affects section 68(7); and
  - (c) the rule may allocate the resource in anticipation of the expiry of existing consents; and
  - (d) in allocating the resource in anticipation of the expiry of existing consents, the rule may—
    - (i) allocate all of the resource used for an activity to the same type of activity; or
    - (ii) allocate some of the resource used for an activity to the same type of activity and the rest of the resource to any other type of activity or no type of activity; and
  - (e) the rule may allocate the resource among competing types of activities; and
  - (f) the rule may allocate water, or heat or energy from water, as long as the allocation does not affect the activities authorised by section 14(3)(b) to (e).

Section 30 heading: amended, on 20 August 1998, by section 9 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 30(1)(c)(iia): inserted, on 1 August 2003, by section 9(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 30(1)(ca): inserted, on 10 August 2005, by section 11(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 30(1)(d)(ii): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 30(1)(d)(iva): inserted, on 20 August 1998, by section 9 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 30(1)(fa): inserted, on 10 August 2005, by section 11(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 30(1)(fb): inserted, on 10 August 2005, by section 11(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 30(1)(ga): inserted, on 1 August 2003, by section 9(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 30(1)(gb): inserted, on 10 August 2005, by section 11(3) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 30(2): substituted, on 1 January 2005, by section 7 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 30(3): added, on 1 January 2005, by section 7 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 30(4): added, on 10 August 2005, by section 11(4) of the Resource Management Amendment Act 2005 (2005 No 87).

### **31 Functions of territorial authorities under this Act**

- (1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:
- (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district:
  - (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—
    - (i) the avoidance or mitigation of natural hazards; and
    - (ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
    - (iia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land;
    - (iii) the maintenance of indigenous biological diversity:

- (c) *[Repealed]*
  - (d) the control of the emission of noise and the mitigation of the effects of noise:
  - (e) the control of any actual or potential effects of activities in relation to the surface of water in rivers and lakes:
  - (f) any other functions specified in this Act.
- (2) The methods used to carry out any functions under subsection (1) may include the control of subdivision.

Section 31 heading: amended, on 7 July 1993, by section 22 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 31(1)(b): substituted, on 1 August 2003, by section 10(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 31(1)(b)(iia): inserted, on 10 August 2005, by section 12 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 31(1)(c): repealed, on 1 August 2003, by section 10(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 31(2): added, on 1 August 2003, by section 10(2) of the Resource Management Amendment Act 2003 (2003 No 23).

### **31A Minister of Conservation to have certain powers of local authority**

- (1) The Minister of Conservation—
- (a) has, in respect of the coastal marine areas of the Kermadec Islands, the Snares Islands, the Bounty Islands, the Antipodes Islands, the Auckland Islands, Campbell Island, and the islands adjacent to Campbell Island, the responsibilities, duties, and powers that a regional council would have under section 30(1)(d) if those coastal marine areas were within the region of that regional council; and
  - (b) may exercise, in respect of the islands specified in paragraph (a),—
    - (i) the responsibilities, duties, and powers that a regional council would have under this Act if those islands were within the region of that regional council; and
    - (ii) the responsibilities, duties, and powers that a territorial authority would have under this Act if those islands were within the district of that territorial authority.

- (2) The responsibilities, duties, and powers conferred on the Minister of Conservation by subsection (1)(b) are in addition to the powers conferred on that Minister by subsection (1)(a).
- (3) The responsibilities, duties, and powers conferred on the Minister of Conservation by this section are in addition to the responsibilities, duties, and powers conferred on that Minister by this Act.

Section 31A: inserted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 31A(1)(b)(i): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **32 Consideration of alternatives, benefits, and costs**

- (1) In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal policy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by—
  - (a) the Minister, for a national environmental standard or a national policy statement; or
  - (b) the Minister of Conservation, for the New Zealand coastal policy statement; or
  - (c) the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Schedule 1); or
  - (d) the person who made the request, for plan changes that have been requested and the request accepted under clause 25(2)(b) of Schedule 1.
- (2) A further evaluation must also be made by—
  - (a) a local authority before making a decision under clause 10 or clause 29(4) of Schedule 1; and
  - (b) the relevant Minister before issuing a national policy statement or New Zealand coastal policy statement.
- (3) An evaluation must examine—
  - (a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and

- (b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.
- (3A) This subsection applies to a rule that imposes a greater prohibition or restriction on an activity to which a national environmental standard applies than any prohibition or restriction in the standard. The evaluation of such a rule must examine whether the prohibition or restriction it imposes is justified in the circumstances of the region or district.
- (4) For the purposes of the examinations referred to in subsections (3) and (3A), an evaluation must take into account—
  - (a) the benefits and costs of policies, rules, or other methods; and
  - (b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.
- (5) The person required to carry out an evaluation under subsection (1) must prepare a report summarising the evaluation and giving reasons for that evaluation.
- (6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.

Section 32: substituted, on 1 August 2003, by section 11 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 32(1)(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 32(1)(c): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 32(1)(d): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 32(3A): inserted, on 10 August 2005, by section 13(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 32(4): amended, on 10 August 2005, by section 13(3) of the Resource Management Amendment Act 2005 (2005 No 87).

### **32A Failure to carry out evaluation**

- (1) A challenge to an objective, policy, rule, or other method on the ground that section 32 has not been complied with may be

made only in a submission under Schedule 1 or a submission under section 49.

- (2) Subsection (1) does not preclude a person who is hearing a submission or an appeal on a proposed plan, proposed policy statement, change, or variation, or a submission on a national policy statement or New Zealand coastal policy statement, from taking into account the matters stated in section 32.

Section 32A: inserted, on 1 August 2003, by section 11 of the Resource Management Amendment Act 2003 (2003 No 23).

### 33 Transfer of powers

- (1) A local authority may transfer any 1 or more of its functions, powers, or duties under this Act, except this power of transfer, to another public authority in accordance with this section.
- (2) For the purposes of this section, **public authority** includes—
- (a) a local authority; and
  - (b) an iwi authority; and
  - (c)
  - (d) a government department; and
  - (e) a statutory authority; and
  - (f) a joint committee set up for the purposes of section 80; and
  - (g) a local board (within the meaning of section 4(1) of the Local Government (Auckland Council) Act 2009.
- (3) *[Repealed]*
- (4) A local authority shall not transfer any of its functions, powers, or duties under this section unless—
- (a) it has used the special consultative procedure set out in section 83 of the Local Government Act 2002; and
  - (b) before using that special consultative procedure it serves notice on the Minister of its proposal to transfer the function, power, or duty; and
  - (c) both authorities agree that the transfer is desirable on all of the following grounds:
    - (i) the authority to which the transfer is made represents the appropriate community of interest relating to the exercise or performance of the function, power, or duty:

- (ii) efficiency:
  - (iii) technical or special capability or expertise.
- (5) *[Repealed]*
- (6) A transfer of functions, powers, or duties under this section shall be made by agreement between the authorities concerned and on such terms and conditions as are agreed.
- (7) A public authority to which any function, power, or duty is transferred under this section may accept such transfer, unless expressly forbidden to do so by the terms of any Act by or under which it is constituted; and upon any such transfer, its functions, powers, and duties shall be deemed to be extended in such manner as may be necessary to enable it to undertake, exercise, and perform the function, power, or duty.
- (8) A local authority which has transferred any function, power, or duty under this section may change or revoke the transfer at any time by notice to the transferee.
- (9) A public authority to which any function, power, or duty has been transferred under this section, may relinquish the transfer in accordance with the transfer agreement.

Section 33(1): substituted, on 1 August 2003, by section 12(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 33(2): substituted, on 1 November 2010, by section 113(1) of the Local Government (Auckland Transitional Provisions) Act 2010 (2010 No 37).

Section 33(2)(c): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 33(3): repealed, on 1 August 2003, by section 12(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 33(4)(a): substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 33(5): repealed, on 1 August 2003, by section 12(2) of the Resource Management Amendment Act 2003 (2003 No 23).

### **34 Delegation of functions, etc, by local authorities**

- (1) A local authority may delegate to any committee of the local authority established in accordance with the Local Government Act 2002 any of its functions, powers, or duties under this Act.
- (2) A territorial authority may delegate to any community board established in accordance with the Local Government Act 2002 any of its functions, powers, or duties under this Act in



respect of any matter of significance to that community, other than the approval of a plan or any change to a plan.

- (3) Subsection (2) does not prevent a local authority delegating to a community board power to do anything before a final decision on the approval of a plan or any change to a plan.
- (3A) The Auckland Council may delegate to any local board any of its functions, powers, or duties under this Act in respect of any matter of local significance to that board, other than the approval of a plan or any change to a plan.
- (3B) Subsection (3A) does not prevent the Auckland Council delegating to a local board power to do anything before a final decision on the approval of a plan or any change to a plan.
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) *[Repealed]*
- (7) Any delegation under this section may be made on such terms and conditions as the local authority thinks fit, and may be revoked at any time by notice to the delegate.
- (8) Except as provided in the instrument of delegation, every person to whom any function, power, or duty has been delegated under this section may, without confirmation by the local authority, exercise or perform the function, power, or duty in like manner and with the same effect as the local authority could itself have exercised or performed it.
- (9) Every person authorised to act under a delegation under this section is presumed to be acting in accordance with its terms in the absence of proof to the contrary.
- (10) A delegation under this section does not affect the performance or exercise of any function, power, or duty by the local authority.
- (11) In subsections (3A) and (3B), **Auckland Council** and **local board** have the meanings given in section 4(1) of the Local Government (Auckland Council) Act 2009.

Section 34(1): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 34(2): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 34(3): substituted, on 1 August 2003, by section 13 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 34(3A): inserted, on 1 November 2010, by section 113(1) of the Local Government (Auckland Transitional Provisions) Act 2010 (2010 No 37).

Section 34(3B): inserted, on 1 November 2010, by section 113(1) of the Local Government (Auckland Transitional Provisions) Act 2010 (2010 No 37).

Section 34(4): repealed, on 1 August 2003, by section 13 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 34(5): repealed, on 1 August 2003, by section 13 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 34(6): repealed, on 1 August 2003, by section 13 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 34(11): added, on 1 November 2010, by section 113(1) of the Local Government (Auckland Transitional Provisions) Act 2010 (2010 No 37).

### **34A Delegation of powers and functions to employees and other persons**

- (1) A local authority may delegate to an employee, or hearings commissioner appointed by the local authority (who may or may not be a member of the local authority), any functions, powers, or duties under this Act except the following:
  - (a) the approval of a proposed policy statement or plan under clause 17 of Schedule 1:
  - (b) this power of delegation.
- (2) A local authority may delegate to any other person any functions, powers, or duties under this Act except the following:
  - (a) the powers in subsection (1)(a) and (b):
  - (b) the decision on an application for a resource consent:
  - (c) the making of a recommendation on a requirement for a designation.
- (3) *[Repealed]*
- (4) Section 34(7), (8), (9), and (10) applies to a delegation under this section.
- (5) Subsection (1) or subsection (2) does not prevent a local authority delegating to any person the power to do anything before a final decision on a matter referred to in those subsections.

Section 34A: inserted, on 1 August 2003, by section 14 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 34A(1)(a): substituted, on 1 October 2009, by section 28 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 34A(3): repealed, on 10 August 2005, by section 14 of the Resource Management Amendment Act 2005 (2005 No 87).

**35 Duty to gather information, monitor, and keep records**

- (1) Every local authority shall gather such information, and undertake or commission such research, as is necessary to carry out effectively its functions under this Act or regulations under this Act.
- (2) Every local authority shall monitor—
  - (a) the state of the whole or any part of the environment of its region or district to the extent that is appropriate to enable the local authority to effectively carry out its functions under this Act; and
  - (b) the efficiency and effectiveness of policies, rules, or other methods in its policy statement or its plan; and
  - (c) the exercise of any functions, powers, or duties delegated or transferred by it; and
  - (d) the exercise of the resource consents that have effect in its region or district, as the case may be; and
  - (e) in the case of a regional council, the exercise of a protected customary right in its region, including any controls imposed on the exercise of that right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011—and take appropriate action (having regard to the methods available to it under this Act) where this is shown to be necessary.
- (2A) Every local authority must, at intervals of not more than 5 years, compile and make available to the public a review of the results of its monitoring under subsection (2)(b).
- (3) Every local authority shall keep reasonably available at its principal office, information which is relevant to the administration of policy statements and plans, the monitoring of resource consents, and current issues relating to the environment of the area, to enable the public—

- (a) to be better informed of their duties and of the functions, powers, and duties of the local authority; and
  - (b) to participate effectively under this Act.
- (4) Every local authority shall keep reasonably available at each of the offices in its region or district such of the information referred to in subsection (3) as relates to that part of the region or district.
- (5) The information to be kept by a local authority under subsection (3) shall include—
  - (a) copies of its operative and any proposed policy statements and plans including all requirements for designations and heritage orders, and all operative and proposed changes to those policy statements and plans; and
  - (aa) copies of all material incorporated by reference in any plan or proposed plan under Part 3 of Schedule 1; and
  - (b) all its decisions relating to submissions on any proposed policy statements and plans which have not yet become operative; and
  - (c) in the case of a territorial authority, copies of every operative and proposed regional policy statement and regional plan for the region of which its district forms part; and
  - (d) in the case of a regional council, copies of every operative and proposed district plan for every territorial authority in its region; and
  - (e) in the case of a regional council, a copy of every Order in Council served on it under section 154(a); and
  - (f) copies of any national environmental standard or national policy statement or New Zealand coastal policy statement; and
  - (g) records of all applications for resource consents received by it; and
  - (ga) records of all decisions under any of sections 37, 87E, 95 to 95F, 198C, and 198H; and
  - (gb) records of all resource consents granted within the local authority's region or district; and
  - (gc) records of the transfer of any resource consent; and

- (h) *[Repealed]*
  - (i) a summary of all written complaints received by it during the preceding 5 years concerning alleged breaches of the Act or a plan, and information on how it dealt with each such complaint; and
  - (j) records of natural hazards to the extent that the local authority considers appropriate for the effective discharge of its functions; and
  - (ja) in the case of a territorial authority, the location and area of all esplanade reserves, esplanade strips, and access strips in the district; and
  - (jb) in the case of a regional council, records of every protected customary rights order or agreement relating to a part of the common marine and coastal area within its region; and
  - (k) any other information gathered under subsections (1) and (2).
- (6) In subsections (2)(e) and (5)(jb), **regional council** includes the Chatham Islands Council.

Section 35(1): amended, on 1 October 2009, by section 29(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 35(2)(b): substituted, on 1 August 2003, by section 15(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 35(2)(d): amended, on 17 January 2005, by section 10(1) of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 35(2)(e): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 35(2A): inserted, on 1 August 2003, by section 15(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 35(5)(aa): inserted, on 10 August 2005, by section 15 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 35(5)(f): amended, on 1 October 2009, by section 29(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 35(5)(g): substituted, on 1 August 2003, by section 15(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 35(5)(ga): inserted, on 1 August 2003, by section 15(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 35(5)(ga): amended, on 1 October 2009, by section 29(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 35(5)(gb): inserted, on 1 August 2003, by section 15(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 35(5)(gc): inserted, on 1 August 2003, by section 15(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 35(5)(h): repealed, on 1 October 2009, by section 29(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 35(5)(ja): inserted, on 7 July 1993, by section 24 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 35(5)(jb): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 35(6): added, on 17 January 2005, by section 10(3) of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

### **35A Duty to keep records about iwi and hapu**

- (1) For the purposes of this Act or regulations under this Act, a local authority must keep and maintain, for each iwi and hapu within its region or district, a record of—
  - (a) the contact details of each iwi authority within the region or district and any groups within the region or district that represent hapu for the purposes of this Act or regulations under this Act; and
  - (b) the planning documents that are recognised by each iwi authority and lodged with the local authority; and
  - (c) any area of the region or district over which 1 or more iwi or hapu exercise kaitiakitanga.
- (2) For the purposes of subsection (1)(a) and (c),—
  - (a) the Crown must provide to each local authority information on—
    - (i) the iwi authorities within the region or district of that local authority and the areas over which 1 or more iwi exercise kaitiakitanga within that region or district; and
    - (ii) any groups that represent hapu for the purposes of this Act or regulations under this Act within the region or district of that local authority and the areas over which 1 or more hapu exercise kaitiakitanga within that region or district; and

- (iii) the matters provided for in subparagraphs (i) and (ii) that the local authority has advised to the Crown; and
  - (b) the local authority must include in its records all the information provided to it by the Crown under paragraph (a).
- (3) In addition to any information provided by a local authority under subsection (2)(a)(iii), the local authority may also keep a record of information relevant to its region or district, as the case may be,—
  - (a) on iwi, obtained directly from the relevant iwi authority; and
  - (b) on hapu, obtained directly from the relevant group representing the hapu for the purposes of this Act or regulations under this Act.
- (4) In this section, the requirement under subsection (1) to keep and maintain a record does not apply in relation to hapu unless a hapu, through the group that represents it for the purposes of this Act or regulations under this Act, requests the Crown or the relevant local authority (or both) to include the required information for that hapu in the record.
- (5) If information recorded under subsection (1) conflicts with a provision of another enactment, advice given under the other enactment, or a determination made under the other enactment, as the case may be,—
  - (a) the provision of the other enactment prevails; or
  - (b) the advice given under the other enactment prevails; or
  - (c) the determination made under the other enactment prevails.
- (6) Information kept and maintained by a local authority under this section must not be used by the local authority except for the purposes of this Act or regulations under this Act.

Section 35A: inserted, on 10 August 2005, by section 16 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 35A(1): amended, on 1 October 2009, by section 30 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 35A(1)(a): amended, on 1 October 2009, by section 30 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 35A(2)(a)(ii): amended, on 1 October 2009, by section 30 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 35A(3)(b): amended, on 1 October 2009, by section 30 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 35A(4): amended, on 1 October 2009, by section 30 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 35A(6): amended, on 1 October 2009, by section 30 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **36 Administrative charges**

- (1) A local authority may from time to time, subject to subsection (2), fix charges of all or any of the following kinds:
- (a) charges payable by applicants for the preparation or change of a policy statement or plan, for the carrying out by the local authority of its functions in relation to such applications:
  - (aa) charges payable by an applicant who makes a request under section 100A in relation to an application for a resource consent, even if 1 or more submitters also make a request, for the cost of the application being heard and decided in accordance with the request:
  - (ab) charges payable if 1 or more submitters make a request under section 100A in relation to an application for a resource consent, but the applicant does not also make a request, as follows:
    - (i) charges payable by the applicant for the amount that the local authority estimates it would cost for the application to be heard and decided if the request had not been made; and
    - (ii) charges payable by the submitters who made a request for equal shares of any amount by which the cost of the application being heard and decided in accordance with the request exceeds the amount payable by the applicant under subparagraph (i):
  - (ac) charges payable by a requiring authority or heritage protection authority who makes a request under section



100A in relation to a notice of requirement, even if 1 or more submitters also make a request, for the cost of the requirement being heard and decided or recommended on in accordance with the request:

- (ad) charges payable if 1 or more submitters make a request under section 100A in relation to a notice of requirement, but the requiring authority or heritage protection authority does not also make a request, as follows:
  - (i) charges payable by the requiring authority or heritage protection authority for the amount that the local authority estimates it would cost for the requirement to be heard and decided or recommended on if the request had not been made; and
  - (ii) charges payable by the submitters who made a request for equal shares of any amount by which the cost of the requirement being heard and decided or recommended on in accordance with the request exceeds the amount payable by the authority under subparagraph (i):
- (b) charges payable by applicants for resource consents, for the carrying out by the local authority of any 1 or more of its functions in relation to the receiving, processing, and granting of resource consents (including certificates of compliance and existing use certificates):
- (c) charges payable by holders of resource consents, for the carrying out by the local authority of its functions in relation to the administration, monitoring, and supervision of resource consents (including certificates of compliance and existing use certificates), and for the carrying out of its resource management functions under section 35:
- (ca) charges payable by persons seeking authorisations under Part 7A, for the carrying out by the local authority of its functions in relation to the allocation of authorisations (whether by tender or any other method), including its functions preliminary to the allocation of authorisations:
- (cb) charges payable by holders of resource consents, for the carrying out by the local authority of any 1 or more of

its functions in relation to reviewing consent conditions, if—

- (i) the review is carried out at the request of the consent holder; or
  - (ii) the review is carried out under section 128(1)(a); or
  - (iii) the review is carried out under section 128(1)(c); or
  - (iv) the review is carried out under section 128(2):
- (d) charges payable by requiring authorities and heritage protection authorities, for the carrying out by the local authority of any 1 or more of its functions in relation to designations and heritage orders:
- (e) charges for providing information in respect of plans and resource consents, payable by the person requesting the information:
- (f) charges for supply of documents, payable by the person requesting the document:
- (g) any kind of charge authorised for the purposes of this section by regulations.

Charges fixed under this subsection shall be either specific amounts or determined by reference to scales of charges or other formulae fixed by the local authority.

- (2) Charges may be fixed under subsection (1) only—
- (a) in the manner set out in section 150 of the Local Government Act 2002; and
  - (b) after using the special consultative procedure set out in section 83 of the Local Government Act 2002; and
  - (c) in accordance with subsection (4).
- (3) Where a charge fixed in accordance with subsection (1) is, in any particular case, inadequate to enable a local authority to recover its actual and reasonable costs in respect of the matter concerned, the local authority may require the person who is liable to pay the charge, to also pay an additional charge to the local authority.
- (3A) A local authority must, upon request by any person liable to pay a charge under this section, provide an estimate of any additional charge likely to be imposed under subsection (3).

- (4) When fixing charges referred to in this section, a local authority shall have regard to the following criteria:
- (a) the sole purpose of a charge is to recover the reasonable costs incurred by the local authority in respect of the activity to which the charge relates:
  - (b) a particular person or persons should only be required to pay a charge—
    - (i) to the extent that the benefit of the local authority's actions to which the charge relates is obtained by those persons as distinct from the community of the local authority as a whole; or
    - (ii) where the need for the local authority's actions to which the charge relates is occasioned by the actions of those persons; or
    - (iii) in a case where the charge is in respect of the local authority's monitoring functions under section 35(2)(a) (which relates to monitoring the state of the whole or part of the environment), to the extent that the monitoring relates to the likely effects on the environment of those persons' activities, or to the extent that the likely benefit to those persons of the monitoring exceeds the likely benefit of the monitoring to the community of the local authority as a whole,—and the local authority may fix different charges for different costs it incurs in the performance of its various functions, powers, and duties under this Act—
  - (c) in relation to different areas or different classes of applicant, consent holder, requiring authority, or heritage protection authority; or
  - (d) where any activity undertaken by the persons liable to pay any charge reduces the cost to the local authority of carrying out any of its functions, powers, and duties.
- (5) A local authority may, in any particular case and in its absolute discretion, remit the whole or any part of any charge of a kind referred to in this section which would otherwise be payable.
- (6) Sections 357B to 358 (which deal with rights of objection and appeal against certain decisions) shall apply in respect of the

requirement by a local authority to pay an additional charge under subsection (3).

- (7) Where a charge of a kind referred to in subsection (1) is payable to a local authority, the local authority need not perform the action to which the charge relates until the charge has been paid to it in full.
- (8) However, subsection (7) does not apply to a charge to which subsection (1)(ab)(ii), (ad)(ii), or (cb)(iv) applies (relating to independent hearings commissioners requested by submitters or reviews required by a court order).

Section 36(1)(aa): inserted, on 1 October 2009, by section 31(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 36(1)(ab): inserted, on 1 October 2009, by section 31(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 36(1)(ac): inserted, on 1 October 2009, by section 31(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 36(1)(ad): inserted, on 1 October 2009, by section 31(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 36(1)(b): amended, on 1 October 2009, by section 31(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 36(1)(b): amended, on 10 August 2005, by section 17(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 36(1)(c): amended, on 10 August 2005, by section 17(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 36(1)(ca): inserted, on 1 January 2005, by section 8 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 36(1)(cb): inserted, on 10 August 2005, by section 17(3) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 36(1)(cb): amended, on 1 October 2009, by section 31(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 36(1)(cb)(iii): amended, on 1 October 2009, by section 31(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 36(1)(cb)(iv): added, on 1 October 2009, by section 31(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 36(1)(d): amended, on 1 October 2009, by section 31(5) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 36(2): substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 36(3A): inserted, on 1 August 2003, by section 16 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 36(6): amended, on 10 August 2005, by section 17(4) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 36(8): added, on 1 October 2009, by section 31(6) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **36AA Local authority policy on discounting administrative charges**

- (1) A local authority may provide a discount on an administrative charge imposed under section 36 in accordance with regulations made under section 360(1)(hj).
- (2) The Minister must recommend to the Governor-General within 9 months of the commencement of section 32 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 that regulations be made under section 360(1)(hj) and the Minister must, before making the recommendation, consult with local authorities about the proposed regulations.
- (3) A local authority may adopt, in accordance with the special consultative procedure set out in section 83 of the Local Government Act 2002, a policy in respect of discounting administrative charges imposed under section 36 of this Act in the circumstances where—
  - (a) an application for a resource consent or an application to change or cancel conditions under section 127 is not processed within the time frames set out in this Act; and
  - (b) the responsibility for the failure rests with the local authority.
- (4) The policy must specify—
  - (a) the discount, or the method for determining the discount, that would be given for any application fees or charges paid or owing; and
  - (b) the procedure an applicant must follow to obtain the discount.

- (5) If a discount in a policy adopted under subsection (3) is more generous than that provided for in the regulations the local authority may comply with the policy instead of the regulations.

Section 36AA: inserted, on 1 October 2009, by section 32 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Duties of local authorities and applicants*

Heading: inserted, on 10 August 2005, by section 18 of the Resource Management Amendment Act 2005 (2005 No 87).

**36A No duty under this Act to consult about resource consent applications and notices of requirement**

- (1) The following apply to an applicant for a resource consent and the local authority:
- (a) neither has a duty under this Act to consult any person about the application; and
  - (b) each must comply with a duty under any other enactment to consult any person about the application; and
  - (c) each may consult any person about the application.
- (2) This section applies to a notice of requirement issued under any of sections 168, 168A, 189, and 189A by a requiring authority or a heritage protection authority, as if—
- (a) the notice were an application for a resource consent; and
  - (b) the authority were an applicant.

Section 36A: inserted, on 10 August 2005, by section 18 of the Resource Management Amendment Act 2005 (2005 No 87).

*Powers and duties of local authorities and other public authorities*

Heading: inserted, on 10 August 2005, by section 18 of the Resource Management Amendment Act 2005 (2005 No 87).

**36B Power to make joint management agreement**

- (1) A local authority that wants to make a joint management agreement must—
- (a) notify the Minister that it wants to do so; and
  - (b) satisfy itself—

- (i) that each public authority, iwi authority, and group that represents hapu for the purposes of this Act that, in each case, is a party to the joint management agreement—
    - (A) represents the relevant community of interest; and
    - (B) has the technical or special capability or expertise to perform or exercise the function, power, or duty jointly with the local authority; and
  - (ii) that a joint management agreement is an efficient method of performing or exercising the function, power, or duty; and
- (c) include in the joint management agreement details of—
  - (i) the resources that will be required for the administration of the agreement; and
  - (ii) how the administrative costs of the joint management agreement will be met.
- (2) A local authority that complies with subsection (1) may make a joint management agreement.

Section 36B: inserted, on 10 August 2005, by section 18 of the Resource Management Amendment Act 2005 (2005 No 87).

### **36C Local authority may act by itself under joint management agreement**

- (1) This section applies when a joint management agreement requires the parties to it to perform or exercise a specified function, power, or duty together.
- (2) The local authority may perform or exercise the function, power, or duty by itself if a decision is required before the parties to the joint management agreement can perform or exercise the function, power, or duty and the joint management agreement does not provide a method for making a decision of that kind.

Section 36C: inserted, on 10 August 2005, by section 18 of the Resource Management Amendment Act 2005 (2005 No 87).

**36D Effect of joint management agreement**

A decision made under a joint management agreement has legal effect as a decision of the local authority.

Section 36D: inserted, on 10 August 2005, by section 18 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 36D: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**36E Termination of joint management agreement**

Any party to a joint management agreement may terminate that agreement by giving the other parties 20 working days' notice.

Section 36E: inserted, on 10 August 2005, by section 18 of the Resource Management Amendment Act 2005 (2005 No 87).

*Waivers and extension of time limits***37 Power of waiver and extension of time limits**

- (1) A consent authority or local authority may, in any particular case,—
  - (a) extend a time period specified in this Act or in regulations, whether or not the time period has expired; or
  - (b) waive a failure to comply with a requirement under this Act, regulations, or a plan for the time or method of service of documents.
- (2) If a person is required to provide information under this Act, regulations, or a plan and the information is inaccurate or omitted, or a procedural requirement is omitted, the consent authority or local authority may—
  - (a) waive compliance with the requirement; or
  - (b) direct that the omission or inaccuracy be rectified on such terms as the consent authority or local authority thinks fit.

Section 37: substituted, on 1 August 2003, by section 17 of the Resource Management Amendment Act 2003 (2003 No 23).

**37A Requirements for waivers and extensions**

- (1) A consent authority or local authority must not extend a time limit or waive compliance with a time limit, a method of ser-



- vice, or the service of a document in accordance with section 37 unless it has taken into account—
- (a) the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and
  - (b) the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and
  - (c) its duty under section 21 to avoid unreasonable delay.
- (2) A time period may be extended under section 37 for—
- (a) a time not exceeding twice the maximum time period specified in this Act; or
  - (b) a time exceeding twice the maximum time period specified in this Act if the applicant or requiring authority requests or agrees.
- (3) Instead of subsections (1) and (2), subsections (4) and (5) apply to an extension of a time limit imposed on a consent authority in respect of—
- (a) an application for a resource consent; or
  - (b) an application to change or cancel a condition of a resource consent; or
  - (c) a review of a resource consent.
- (4) A consent authority may extend a time period under section 37 only if—
- (a) the time period as extended does not exceed twice the maximum time period specified in this Act; and
  - (b) either—
    - (i) special circumstances apply (including special circumstances existing by reason of the scale or complexity of the matter); or
    - (ii) the applicant agrees to the extension; and
  - (c) the authority has taken into account the matters specified in subsection (1).
- (5) A consent authority may extend a time period under section 37 so that the extended period exceeds twice the maximum time period specified in the Act only if—
- (a) the applicant agrees to the extension; and
  - (b) the authority has taken into account the matters specified in subsection (1).

- (6) A consent authority or a local authority must ensure that every person who, in its opinion, is directly affected by the extension of a time limit or the waiver of compliance with a time limit, a method of service, or the service of a document is notified of the extension or waiver.

Section 37A: inserted, on 1 August 2003, by section 17 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 37A(3): substituted, on 1 October 2009, by section 33 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 37A(4): added, on 1 October 2009, by section 33 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 37A(5): added, on 1 October 2009, by section 33 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 37A(6): added, on 1 October 2009, by section 33 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **37B Persons to have powers of consent authority for purposes of sections 37 and 37A**

The following bodies have the powers of a consent authority under sections 37 and 37A for the following matters:

- (a) the Minister, while carrying out any of his or her functions under Part 6AA:
- (b) a board of inquiry appointed under section 149J, while carrying out its functions under Part 6AA, except in respect of the time periods and requirements under section 149R:
- (ba) the EPA, while carrying out its functions under Part 6AA, except in respect of the time periods and requirements under section 146(1):
- (c) a special tribunal appointed under section 202, for all matters while carrying out its functions.
- (d) *[Repealed]*

Section 37B: inserted, on 1 August 2003, by section 17 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 37B(a): substituted, on 1 October 2009, by section 34 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 37B(b): substituted, on 1 October 2009, by section 34 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 37B(ba): inserted, on 1 October 2009, by section 34 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 37B(d): repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

*Enforcement officers*

**38 Authorisation and responsibilities of enforcement officers**

- (1) A local authority may authorise—
  - (a) any of its officers; or
  - (b) any of the officers of any other local authority, or of the new Ministry, or the Department of Conservation, or Maritime New Zealand, subject to such terms and conditions as to payment of salary and expenses and as to appointment of his or her duties as may be agreed upon between the relevant authorities—

to carry out all or any of the functions and powers as an enforcement officer under this Act.
- (2) A local authority may authorise any person who is—
  - (a) the holder of a licence as a property guard issued under section 34 of the Private Security Personnel and Private Investigators Act 2010; or
  - (b) employed by a person authorised under paragraph (a) and who is—
    - (i) the holder of a certificate of approval issued under section 40 of that Act; or
    - (ii) a person in respect of whom permission granted under section 37 of that Act is in force—

to exercise or carry out all or any of the functions and powers of an enforcement officer under sections 327 and 328 (which relate to excessive noise).
- (3) The Minister of Conservation may authorise any officers of the Department of Conservation or of a local authority to exercise and carry out the functions and powers of an enforcement officer under this Act in relation to 1 or more of the following:
  - (a) compliance with a resource consent issued by that Minister under section 31A:

- (b) *[Repealed]*  
(c) *[Repealed]*
- (4) Any authorisation under subsection (3) to an officer of a local authority is subject to such terms and conditions as to payment of salary and expenses and as to appointment of his or her duties as may be agreed between the Minister and the local authority.
- (5) The local authority or Minister shall supply every enforcement officer with a warrant, and that warrant shall clearly state the functions and powers that the person concerned has been authorised to exercise and carry out under this Act.
- (6) Every enforcement officer who exercises or purports to exercise any power conferred on him or her by this Act shall have with him or her, and shall produce if required to do so, his or her warrant and evidence of his or her identity.
- (7) Every enforcement officer who holds a warrant issued under this section shall, on the termination of his or her appointment as such, surrender the warrant to the local authority or Minister, as the case may be.

Section 38(1)(b): amended, on 1 July 2005, by section 11(3) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 38(1)(b): amended, on 1 March 1998, pursuant to section 5(1)(c) of the Ministries of Agriculture and Forestry (Restructuring) Act 1997 (1997 No 100).

Section 38(1)(b): amended, on 17 December 1997, by section 9(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 38(2): amended, on 7 July 1993, by section 26 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 38(2)(a): substituted, on 1 April 2011, by section 121(1) of the Private Security Personnel and Private Investigators Act 2010 (2010 No 115).

Section 38(2)(b): substituted, on 17 December 1997, by section 9(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 38(3): amended, on 17 January 2005, by section 12(1) of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 38(3)(a): substituted, on 1 October 2009, by section 35(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 38(3)(b): repealed, on 1 October 2009, by section 35(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 38(3)(c): repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

*Powers and duties in relation to hearings*

**39 Hearings to be public and without unnecessary formality**

- (1) Where a local authority, a consent authority, or a person given authority to conduct hearings under any of sections 33, 34, 34A, 117, 149J, 202, or 357C, holds a hearing in relation to—
- (a) a proposed policy statement, a plan, a change, or a variation; or
  - (b) an application for a resource consent; or
  - (c) a review of a resource consent; or
  - (d) an application to change or cancel a condition of a resource consent; or
  - (e) a matter for which a direction has been made under section 142(2) or 147(1)(a); or
  - (f) a requirement for a designation or heritage order; or
  - (fa) a requirement to alter a designation or heritage order; or
  - (g) an application for a water conservation order,—
- the authority shall hold the hearing in public (unless permitted to do otherwise by section 42 (which relates to the protection of sensitive information) or the Local Government Official Information and Meetings Act 1987), and shall establish a procedure that is appropriate and fair in the circumstances.
- (2) In determining an appropriate procedure for the purposes of subsection (1), the authority shall—
- (a) avoid unnecessary formality; and
  - (b) recognise tikanga Maori where appropriate, and receive evidence written or spoken in Maori and the Maori Language Act 1987 shall apply accordingly; and
  - (c) not permit any person other than the chairperson or other member of the hearing body to question any party or witness; and
  - (d) not permit cross-examination.

Section 39(1): amended, on 1 October 2009, by section 36(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 39(1): amended, on 10 August 2005, by section 20(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 39(1): amended, on 10 August 2005, by section 20(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 39(1): amended, on 7 July 1993, by section 27(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 39(1)(a): amended, on 1 October 2009, by section 36(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 39(1)(c): amended, on 1 October 2009, by section 36(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 39(1)(d): amended, on 1 October 2009, by section 36(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 39(1)(e): substituted, on 1 October 2009, by section 36(5) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 39(1)(fa): inserted, on 1 October 2009, by section 36(6) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **39A Accreditation**

The Minister must—

- (a) approve a qualification or qualifications establishing a person's accreditation; and
- (b) notify each qualification in the *Gazette*.

Section 39A: inserted, on 10 August 2005, by section 21 of the Resource Management Amendment Act 2005 (2005 No 87).

### **39B Persons who may be given hearing authority**

- (1) This section applies when a local authority wants to apply any of sections 33, 34, and section 34A to give authority to 1 person or a group of persons to conduct a hearing on—
  - (a) an application for a resource consent that is notified; or
  - (b) a notice of requirement given under section 168 or section 189; or
  - (c) a request under clause 21(1) of Schedule 1 for a change to be made to a plan.
- (2) If the local authority wants to give authority to 1 person, it may do so only if the person is accredited.
- (3) If the local authority wants to give authority to a group of persons that has a chairperson, it may do so only if the chairperson is accredited.
- (4) If the local authority wants to give authority to a group of persons, whether or not the group has a chairperson, it may do so only if over half of all the persons are accredited.

Section 39B: inserted, on 9 August 2006, by section 22(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 39B(1)(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 39B(4): added, on 9 August 2007, by section 22(2) of the Resource Management Amendment Act 2005 (2005 No 87).

**39C Effect of lack of accreditation**

- (1) This section applies when a local authority purports to give authority under section 39B to a person or group of persons, but does not in fact give it because the person, chairperson of the group, or members of the group are not accredited as required by the section.
- (2) No decision made by the person or group of persons is invalid solely because the person, chairperson of the group, or members of the group were not accredited as required by section 39B.

Section 39C: inserted, on 10 August 2005, by section 23 of the Resource Management Amendment Act 2005 (2005 No 87).

**40 Persons who may be heard at hearings**

- (1) At any hearing described in section 39, the applicant, and every person who has made a submission and stated that they wished to be heard at the hearing, may speak (either personally or through a representative) and call evidence.
- (2) Notwithstanding subsection (1), the authority may, if it considers that there is likely to be excessive repetition, limit the circumstances in which parties having the same interest in a matter may speak or call evidence in support.
- (3) If—
  - (a) the applicant; or
  - (b) any person who made a submission and stated they wished to be heard at any such hearing—fails to appear at the hearing, the authority may nevertheless proceed with the hearing, if it considers it fair and reasonable to do so.

Section 40 heading: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 40(3): added, on 7 July 1993, by section 28 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 40(3): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **41 Provisions relating to hearings**

- (1) The following provisions of the Commissions of Inquiry Act 1908 apply to every hearing conducted by a local authority, a consent authority, or a person given authority to conduct hearings under sections 33, 34, 34A, 117, 149J, or 202:
  - (a) section 4, which gives powers to maintain order:
  - (b) section 4B, which relates to evidence:
  - (c) section 4D, which gives power to summon witnesses:
  - (d) section 5, which relates to the service of a summons:
  - (e) section 6, which relates to the protection of witnesses:
  - (f) section 7, which relates to allowances for witnesses.
- (2) Every summons to a witness to appear at a hearing shall be in the prescribed form and be signed by the chairperson of the hearing.
- (3) All allowances for a witness shall be paid by the party on whose behalf the witness is called.
- (4) At every hearing conducted in relation to a matter described in section 39(1), the authority may request and receive, from any person who makes a report under section 42A or who is heard by the authority or who is represented at the hearing, any information or advice that is relevant and reasonably necessary to determine the application.

Section 41(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 41(1): amended, on 10 August 2005, by section 24 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 41(4): added, on 7 July 1993, by section 29 of the Resource Management Amendment Act 1993 (1993 No 65).

#### **41A Control of hearings**

An authority conducting a hearing on a matter described in section 39(1) may exercise a power under section 41B or sec-



tion 41C, after considering whether the scale and significance of the hearing makes the exercise of the power appropriate.

Section 41A: inserted, on 10 August 2005, by section 25(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**41B Directions to provide evidence within time limits**

- (1) The authority may direct the applicant to provide briefs of evidence to the authority before the hearing.
- (2) The applicant must provide the briefs of evidence at least 10 working days before the hearing.
- (3) The authority may direct a person who has made a submission and who is intending to call expert evidence to provide briefs of the evidence to the authority before the hearing.
- (4) The person must provide the briefs of evidence at least 5 working days before the hearing.
- (5) If the authority has exercised a power under this section, section 101(2) does not apply. Instead, subsection (6) or (7) of this section applies.
- (6) If section 87I, 198G, or 198N applies, the authority must hold the hearing no more than 30 working days after the date on which it knows that the section applies.
- (7) In any other case, the authority must hold the hearing within 40 working days after the closing date for submissions.

Section 41B: inserted, on 10 August 2005, by section 25(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 41B(5): substituted, on 1 October 2009, by section 37 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 41B(6): added, on 1 October 2009, by section 37 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 41B(7): added, on 1 October 2009, by section 37 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**41C Directions and requests before or at hearings**

- (1) Before or at the hearing, the authority may—
  - (a) direct the order of business at the hearing, including the order in which evidence and submissions are presented; or
  - (b) direct that evidence and submissions be—

- (i) recorded; or
    - (ii) taken as read; or
    - (iii) limited to matters in dispute; or
  - (c) direct the applicant, when presenting evidence or a submission, to present it within a time limit; or
  - (d) direct a person who has made a submission, when presenting evidence or a submission, to present it within a time limit.
- (2) Before or at the hearing, the authority may request a person who has made a submission to provide further information.
- (3) At the hearing, the authority may request the applicant to provide further information.
- (4) At the hearing, the authority may commission a consultant or any other person employed for the purpose to prepare a report on any matter on which the authority requires further information, if all the following apply:
- (a) the activity that is the subject of the hearing may, in the authority's opinion, have a significant adverse environmental effect; and
  - (b) the applicant is notified before the authority commissions the report; and
  - (c) the applicant does not refuse to agree to the commissioning of the report.
- (5) The authority must provide a copy of any further information requested under subsection (2), and received before the hearing, to the applicant and every person who made a submission.
- (5A) Subsection (5B) applies to—
- (a) any further information that—
    - (i) is requested under subsection (2) or (3); and
    - (ii) is received in writing or electronically after the start of the hearing; but
    - (iii) is not given as evidence at the hearing; and
  - (b) any report that is commissioned under subsection (4).
- (5B) The authority must—
- (a) provide a copy of the further information or report to the applicant and every person who made a submission and stated a wish to be heard; and

- (b) make the further information or report available at its office to any person who made a submission and did not state a wish to be heard.
- (5C) However, the authority does not need to provide further information to the applicant or submitter who provided the information.
- (6) At the hearing, the authority may direct a person presenting a submission not to present—
  - (a) the whole submission, if all of it is irrelevant or not in dispute; or
  - (b) any part of it that is irrelevant or not in dispute.
- (7) Before or at the hearing, the authority may direct that the whole, or a part, of a submission be struck out if the authority considers—
  - (a) that the whole submission, or the part, is frivolous or vexatious; or
  - (b) that the whole submission, or the part, discloses no reasonable or relevant case; or
  - (c) that it would otherwise be an abuse of the hearing process to allow the whole submission, or the part, to be taken further.
- (8) If the authority gives a direction under subsection (7), it must record its reasons for the direction.
- (9) A person whose submission, or part of whose submission, is struck out has a right of objection under section 357.

Section 41C: inserted, on 10 August 2005, by section 25(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 41C(5): substituted, on 1 October 2009, by section 38 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 41C(5A): inserted, on 1 October 2009, by section 38 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 41C(5B): inserted, on 1 October 2009, by section 38 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 41C(5C): inserted, on 1 October 2009, by section 38 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 41C(7): added, on 9 August 2007, by section 25(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 41C(8): added, on 9 August 2007, by section 25(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 41C(9): added, on 9 August 2007, by section 25(2) of the Resource Management Amendment Act 2005 (2005 No 87).

## **42 Protection of sensitive information**

- (1) A local authority may, on its own motion or on the application of any party to any proceedings or class of proceedings, make an order described in subsection (2) where it is satisfied that the order is necessary—
  - (a) to avoid serious offence to tikanga Maori or to avoid the disclosure of the location of waahi tapu; or
  - (b) to avoid the disclosure of a trade secret or unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information,—and, in the circumstances of the particular case, the importance of avoiding such offence, disclosure, or prejudice outweighs the public interest in making that information available.
- (2) A local authority may make an order for the purpose of subsection (1)—
  - (a) that the whole or part of any hearing or class of hearing at which the information is likely to be referred to, shall be held with the public excluded (which order shall, for the purposes of subsections (3) to (5) of section 48 of the Local Government Official Information and Meetings Act 1987, be deemed to be a resolution passed under that section);
  - (b) prohibiting or restricting the publication or communication of any information supplied to it, or obtained by it, in the course of any proceedings, whether or not the information may be material to any proposal, application, or requirement.
- (3) An order made under subsection (2)(b) in relation to—
  - (a) any matter described in subsection (1)(a) may be expressed to have effect from the commencement of any proceedings to which it relates and for an indefinite period or until such date as the local authority considers appropriate in the circumstances:

- (b) any matter described in subsection (1)(b) may be expressed to have effect from the commencement of any proceedings to which it relates but shall cease to have any effect at the conclusion of those proceedings—  
and upon the date that such order ceases to have effect, the provisions of the Local Government Official Information and Meetings Act 1987 shall apply accordingly in respect of any information that was the subject of any such order.
- (4) Any party to any proceedings or class of proceedings before a local authority may apply to the Environment Court for an order under section 279(3)(a) cancelling or varying any order made by the local authority under this section.
- (5) Where, on the application of any party to any proceedings or class of proceedings, a local authority has declined to make an order described in subsection (2), that party may apply to the Environment Court for an order under section 279(3)(b).
- (6) In this section—
  - (a) **information** includes any document or evidence:
  - (b) **local authority** includes—
    - (i) a board of inquiry appointed under section 47 or 149J:
    - (ii) a community board:
    - (iii) a public body:
    - (iv) a special tribunal:
    - (v) a person given authority to conduct hearings under any of sections 33, 34, 34A, 117, and 202.

Section 42(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 42(5): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 42(6)(b): substituted, on 1 October 2009, by section 39 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### *Reports*

Heading: inserted, on 7 July 1993, by section 30 of the Resource Management Amendment Act 1993 (1993 No 65).

**42A Reports to local authority**

- (1) At any reasonable time before a hearing or, if no hearing is to be held, before the decision is made, a local authority may require an officer of a local authority (as local authority is defined in section 42(6)(b)), or may commission a consultant or any other person employed for the purpose, to prepare a report on information provided on any matter described in section 39(1) by the applicant or any person who made a submission.
- (1A) The report does not need to repeat material from an assessment of environmental effects provided by the applicant.
- (1B) Instead, the report may—
  - (a) adopt the whole assessment; or
  - (b) adopt any part of the assessment by referring to the part adopted.
- (2) Any report prepared under subsection (1) may be considered at any hearing conducted by the local authority.
- (3) If the report is in writing, the local authority must provide a copy of it to the applicant, and to every person who made a submission and stated a wish to be heard at the hearing, so that they receive the copy—
  - (a) at least 15 working days before the hearing, if the authority gives a direction under section 41B; or
  - (b) at least 5 working days before the hearing, if the authority does not give a direction under section 41B.
- (4) If the report is in writing, the authority must—
  - (a) make the report available at its office to any person who made a submission and did not state a wish to be heard; and
  - (b) give written or electronic notice to those submitters that the report is available at the authority's office.
- (5) The local authority may waive compliance with—
  - (a) subsection (3) if it is satisfied that there is no material prejudice, or is not aware of any material prejudice, to any person who should have been provided with a copy of the report under that subsection; or
  - (b) subsection (4)(b) if it is satisfied that there is no material prejudice, or is not aware of any material prejudice, to

any person who should have been given notice of the report under that paragraph.

Section 42A: inserted, on 7 July 1993, by section 30 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 42A(1): substituted, on 10 August 2005, by section 26(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 42A(1): amended, on 1 October 2009, by section 40(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 42A(1A): inserted, on 1 October 2009, by section 40(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 42A(1B): inserted, on 1 October 2009, by section 40(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 42A(3): substituted, on 1 October 2009, by section 40(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 42A(4): substituted, on 1 October 2009, by section 40(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 42A(5): added, on 1 October 2009, by section 40(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **Part 4A**

### **Environmental Protection Authority**

Part 4A: inserted, on 1 October 2009, by section 41 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **42B Establishment of Environmental Protection Authority**

This section establishes the Environmental Protection Authority.

Section 42B: inserted, on 1 October 2009, by section 41 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **42C Functions of EPA**

The functions of the Environmental Protection Authority are—

- (a) to receive matters lodged under section 145:

- (b) to make recommendations to the Minister under section 146 or 149ZB in respect of a matter referred to in paragraph (a):
- (c) to make decisions under section 139 on applications for certificates of compliance for proposals or activities that are related to proposals of national significance:
- (d) to provide secretarial and support services to boards of inquiry appointed under section 149J:
- (e) to exercise any powers or perform any functions or duties delegated to it by the Minister under section 29(4):
- (f) to exercise any other functions specified in this Act.

Section 42C: inserted, on 1 October 2009, by section 41 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **42D Secretary for the Environment to exercise functions of EPA**

- (1) The Environmental Protection Authority is an office within the Ministry for the Environment.
- (2) The Secretary for the Environment has and may exercise all the powers and perform all the functions and duties of the Environmental Protection Authority.
- (3) The Secretary for the Environment may delegate any function, duty, or power imposed upon him or her by the operation of subsection (2) to any employee of the Ministry for the Environment.
- (4) In this section, **Secretary for the Environment** means the person appointed in accordance with section 29 of the Environment Act 1986 as the Secretary for the Environment (being the administrative head of the Ministry for the Environment).

Section 42D: inserted, on 1 October 2009, by section 41 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **Part 5**

### **Standards, policy statements, and plans**

#### **43AA Interpretation**

In this Act, unless the context requires another meaning,—



**change** means—

- (a) a change proposed by a local authority to a policy statement or plan under clause 2 of Schedule 1; and
- (b) a change proposed by any person to a policy statement or plan by a request under clause 21 of Schedule 1

**district plan**—

- (a) means an operative plan approved by a territorial authority under Schedule 1; and
- (b) includes all operative changes to the plan (whether arising from a review or otherwise)

**operative**, in relation to a policy statement or plan, or a provision of a policy statement or plan, means that the policy statement, plan, or provision—

- (a) has become operative—
  - (i) in terms of clause 20 of Schedule 1; or
  - (ii) under section 86F; and
- (b) has not ceased to be operative

**plan** means a regional plan or a district plan

**policy statement** means a regional policy statement

**proposed policy statement** means a proposed policy statement that has been notified under clause 5 of Schedule 1 but has not become operative in terms of clause 20 of Schedule 1

**regional coastal plan**—

- (a) means an operative plan approved by the Minister of Conservation under Schedule 1; and
- (b) includes all operative changes to the plan (whether arising from a review or otherwise)

**regional plan**—

- (a) means an operative plan approved by a regional council under Schedule 1 (including all operative changes to the plan (whether arising from a review or otherwise)); and
- (b) includes a regional coastal plan

**regional policy statement**—

- (a) means an operative regional policy statement approved by a regional council under Schedule 1; and
- (b) includes all operative changes to the policy statement (whether arising from a review or otherwise)

**rule** means a district rule or a regional rule

**variation** means an alteration by a local authority under clause 16A of Schedule 1 to—

- (a) a proposed policy statement or plan; or
- (b) a change.

Section 43AA: inserted, on 1 October 2009, by section 42 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **43AAB Meaning of district rule and regional rule**

- (1) In this Act, unless the context otherwise requires, **district rule** means a rule made as part of a district plan or proposed district plan in accordance with section 76.
- (2) Subsection (1) is subject to section 86B and clause 10(5) of Schedule 1.
- (3) In this Act, unless the context otherwise requires, **regional rule** means a rule made as part of a regional plan or proposed regional plan in accordance with section 68.
- (4) Subsection (3) is subject to section 86B and clause 10(5) of Schedule 1.

Section 43AAB: inserted, on 1 October 2009, by section 42 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **43AAC Meaning of proposed plan**

- (1) In this Act, unless the context otherwise requires, **proposed plan**—
  - (a) means a proposed plan, a variation to a proposed plan or change, or a change to a plan proposed by a local authority that has been notified under clause 5 of Schedule 1 but has not become operative in terms of clause 20 of Schedule 1; and
  - (b) includes a proposed plan or a change to a plan proposed by a person under Part 2 of Schedule 1 that has been adopted by the local authority under clause 25(2)(a) of Schedule 1.
- (2) Subsection (1) is subject to section 86B and clause 10(5) of Schedule 1.

Section 43AAC: inserted, on 1 October 2009, by section 42 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*National environmental standards*

**43 Regulations prescribing national environmental standards**

- (1) The Governor-General may, by Order in Council, make regulations, to be known as national environmental standards, that prescribe any or all of the following technical standards, methods, or requirements:
  - (a) standards for the matters referred to in section 9, section 11, section 12, section 13, section 14, or section 15, including, but not limited to—
    - (i) contaminants:
    - (ii) water quality, level, or flow:
    - (iii) air quality:
    - (iv) soil quality in relation to the discharge of contaminants:
  - (b) standards for noise:
  - (c) standards, methods, or requirements for monitoring.
- (2) The regulations may include:
  - (a) qualitative or quantitative standards:
  - (b) standards for any discharge or the ambient environment:
  - (c) methods for classifying a natural or physical resource:
  - (d) methods, processes, or technology to implement standards:
  - (e) exemptions from standards:
  - (f) transitional provisions for standards, methods, or requirements.
- (3) Section 360(2) applies to all regulations made under this section.

Section 43: substituted, on 20 May 2003, by section 18 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 43(1)(a): amended, on 10 August 2005, by section 27 of the Resource Management Amendment Act 2005 (2005 No 87).

**43A Contents of national environmental standards**

- (1) National environmental standards may—
  - (a) prohibit an activity:
  - (b) allow an activity:

- (c) restrict the making of a rule or the granting of a resource consent to matters specified in a national environmental standard:
  - (d) require a person to obtain a certificate from a specified person stating that an activity complies with a term or condition imposed by a national environmental standard:
  - (e) specify, in relation to a rule made before the commencement of a national environmental standard,—
    - (i) the extent to which any matter to which the standard applies continues to have effect; or
    - (ii) the time period during which any matter to which the standard applies continues to have effect:
  - (f) require local authorities to review, under section 128(1), all or any of the permits to which paragraph (ba) of that subsection applies as soon as practicable or within the time specified in a national environmental standard.
- (2) A national environmental standard that prohibits an activity—
- (a) may do one or both of the following:
    - (i) state that a resource consent may be granted for the activity, but only on the terms or conditions specified in the standard; and
    - (ii) require compliance with the rules in a plan or proposed plan as a term or condition; or
  - (b) may state that the activity is a prohibited activity.
- (3) If an activity has significant adverse effects on the environment, a national environmental standard must not, under subsections (1)(b) and (4),—
- (a) allow the activity, unless it states that a resource consent is required for the activity; or
  - (b) state that the activity is a permitted activity.
- (4) A national environmental standard that allows an activity—
- (a) may state that a resource consent is not required for the activity; or
  - (b) may do one or both of the following:
    - (i) state that the activity is a permitted activity, but only on the terms or conditions specified in the standard; and

- (ii) require compliance with the rules in a plan or proposed plan as a term or condition.
- (5) If a national environmental standard allows an activity and states that a resource consent is not required for the activity, or states that an activity is a permitted activity, the following provisions apply to plans and proposed plans:
  - (a) a plan or proposed plan may state that the activity is a permitted activity on the terms or conditions specified in the plan; and
  - (b) the terms or conditions specified in the plan may deal only with effects of the activity that are different from those dealt with in the terms or conditions specified in the standard; and
  - (c) if a plan's terms or conditions deal with effects of the activity that are the same as those dealt with in the terms or conditions specified in the standard, the terms or conditions in the standard prevail.
- (6) A national environmental standard that allows a resource consent to be granted for an activity—
  - (a) may state that the activity is—
    - (i) a controlled activity; or
    - (ii) a restricted discretionary activity; or
    - (iii) a discretionary activity; or
    - (iv) a non-complying activity; and
  - (b) may state the matters over which—
    - (i) control is reserved; or
    - (ii) discretion is restricted.
- (7) A national environmental standard may specify the activities for which the consent authority—
  - (a) must give public notification of an application for a resource consent:
  - (b) is precluded from giving public notification of an application for a resource consent:
  - (c) is precluded from giving limited notification of an application for a resource consent.

Section 43A: inserted, on 20 May 2003, by section 18 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 43A heading: substituted, on 1 October 2009, by section 43(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 43A(1): amended, on 10 August 2005, by section 28(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(1)(b): substituted, on 10 August 2005, by section 28(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(1)(c): amended, on 10 August 2005, by section 28(3) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(1)(d): amended, on 10 August 2005, by section 28(3) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(1)(e): amended, on 10 August 2005, by section 28(4)(a) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(1)(e)(i): amended, on 10 August 2005, by section 28(4)(b) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(1)(e)(ii): amended, on 10 August 2005, by section 28(4)(b) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(1)(f): amended, on 10 August 2005, by section 28(5) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(2): substituted, on 10 August 2005, by section 28(6) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(3): added, on 10 August 2005, by section 28(6) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(4): added, on 10 August 2005, by section 28(6) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(5): added, on 10 August 2005, by section 28(6) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(6): added, on 10 August 2005, by section 28(6) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43A(7): added, on 1 October 2009, by section 43(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **43B Relationship between national environmental standards and rules or consents**

- (1) A rule or resource consent that is more stringent than a national environmental standard prevails over the standard, if the standard expressly says that a rule or consent may be more stringent than it.
- (2) For the purposes of subsection (1),—
  - (a) a rule is more stringent than a standard if it prohibits or restricts an activity that the standard permits or authorises:

- (b) a resource consent is more stringent than a standard if it imposes conditions on an activity that the standard does not impose or authorise.
- (3) A rule or resource consent may not be more lenient than a national environmental standard.
- (4) For the purposes of subsection (3), a rule or resource consent is more lenient than a standard if it permits or authorises an activity that the standard prohibits or restricts.
- (5) A land use consent or a subdivision consent granted before the date on which a national environmental standard is notified in the *Gazette* prevails over the standard.
- (6) A coastal, water, or discharge permit granted before the date on which a national environmental standard is notified in the *Gazette* prevails over the standard until a review of the permit's conditions under section 128(1)(ba) results in some or all of the standard prevailing over the permit.
- (7) This subsection applies to a resource consent not covered by subsection (5) or (6). The consent prevails over a national environmental standard if the application giving rise to the consent was the subject of a decision on whether to notify it before the date on which the standard is notified in the *Gazette*. However, the consent does not prevail if the standard expressly provides otherwise.
- (8) *[Repealed]*
- (9) If a national environmental standard requires a resource consent to be obtained for an activity, sections 10, 10A, 10B, and 20A(2) apply to the activity as if the standard were a rule in a plan that had become operative.

Section 43B: substituted, on 10 August 2005, by section 29 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 43B(5): substituted, on 1 October 2009, by section 44 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 43B(6): substituted, on 1 October 2009, by section 44 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 43B(7): substituted, on 1 October 2009, by section 44 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 43B(8): repealed, on 1 October 2009, by section 44 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**43C Relationship between national environmental standards and water conservation orders**

- (1) A water conservation order that is more stringent than a national environmental standard applying to water prevails over the standard.
- (2) A national environmental standard applying to water that is more stringent than a water conservation order prevails over the order.

Section 43C: substituted, on 10 August 2005, by section 29 of the Resource Management Amendment Act 2005 (2005 No 87).

**43D Relationship between national environmental standards and designations**

- (1) A designation that exists when a national environmental standard is made prevails over the standard until the earlier of the following:
  - (a) the designation lapses;
  - (b) the designation is altered under section 181 by the alteration of conditions in it to which the standard is relevant.
- (2) If the conditions of a designation are altered as described in subsection (1)(b), the standard—
  - (a) applies to the altered conditions; and
  - (b) does not apply to the unaltered conditions.
- (3) A national environmental standard prevails over a designation that requires an outline plan if, when the standard is made,—
  - (a) the designation exists; and
  - (b) no outline plan for the designation has completed the process described in section 176A.
- (4) A national environmental standard that exists when a designation is made prevails over the designation.
- (5) A use is not required to comply with a national environmental standard if—
  - (a) the use was lawfully established by way of a designation that has lapsed; and



- (b) the effects of the use, in character, intensity, and scale, are the same as or similar to those that existed before the designation lapsed; and
  - (c) the standard is made—
    - (i) after the designation was made; and
    - (ii) before or after it lapses.
- (6) Work under a designation is not required to comply with a national environmental standard if the work has come under the designation through the following sequence of events:
  - (a) the work is made; and
  - (b) the standard is made; and
  - (c) the designation is applied to the work.
- (7) In this section, **conditions** includes a condition about the physical boundaries of a designation.

Section 43D: substituted, on 10 August 2005, by section 29 of the Resource Management Amendment Act 2005 (2005 No 87).

#### **43E Relationship between national environmental standards and bylaws**

- (1) A bylaw that is more stringent than a national environmental standard prevails over the standard, if the standard expressly says that a bylaw may be more stringent than it.
- (2) For the purposes of subsection (1), a bylaw is more stringent than a standard if it prohibits or restricts an activity that the standard permits or authorises.
- (3) A bylaw may not be more lenient than a national environmental standard.
- (4) For the purposes of subsection (3), a bylaw is more lenient than a standard if it permits or authorises an activity that the standard prohibits or restricts.
- (5) In this section, **bylaw** means a bylaw made under any enactment.

Section 43E: substituted, on 10 August 2005, by section 29 of the Resource Management Amendment Act 2005 (2005 No 87).

#### **43F Description of discharges in national environmental standards for discharges**

A national environmental standard for an activity that is a discharge may describe the discharge by referring to—

- (a) particular contaminants or sources of contaminants in a discharge; or
- (b) the circumstances or sources of a discharge.

Section 43F: inserted, on 10 August 2005, by section 29 of the Resource Management Amendment Act 2005 (2005 No 87).

#### **43G Incorporation of material by reference in national environmental standards**

A national environmental standard may incorporate material by reference under Schedule 1AA.

Section 43G: inserted, on 10 August 2005, by section 29 of the Resource Management Amendment Act 2005 (2005 No 87).

#### **44 Restriction on power to make national environmental standards**

- (1) The Minister must follow the steps set out in subsection (2) before recommending the making of a national environmental standard to the Governor-General. Subsection (3) modifies this subsection.
- (2) The steps are—
  - (a) to notify the public and iwi authorities of—
    - (i) the proposed subject matter of the standard; and
    - (ii) the Minister's reasons for considering that the standard is consistent with the purpose of the Act; and
  - (b) to establish a process that—
    - (i) the Minister considers gives the public and iwi authorities adequate time and opportunity to comment on the proposed subject matter of the standard; and
    - (ii) requires a report and recommendation to be made to the Minister on those comments and the proposed subject matter of the standard; and
  - (c) to publicly notify the report and recommendation.
- (3) The Minister need not follow the steps if the Minister is recommending the making of an amendment—
  - (a) that has no more than a minor effect; or
  - (b) that corrects errors or makes similar technical alterations.

Section 44: substituted, on 1 October 2009, by section 45 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**44A Local authority recognition of national environmental standards**

- (1) Subsections (3) to (5) apply if a local authority's plan or proposed plan contains a rule that duplicates a provision in a national environmental standard.
- (2) Subsections (3) to (5) apply if a local authority's plan or proposed plan contains a rule that conflicts with a provision in a national environmental standard. A rule conflicts with a provision if—
  - (a) both of the following apply:
    - (i) the rule is more stringent than the provision in that it prohibits or restricts an activity that the provision permits or authorises; and
    - (ii) the standard does not expressly say that a rule may be more stringent than it; or
  - (b) the rule is more lenient than the provision.
- (3) If the duplication or conflict is dealt with in the national environmental standard in one of the ways described in section 43A(1)(e), the local authority must amend the plan or proposed plan to remove the duplication or conflict—
  - (a) without using the process in Schedule 1; and
  - (b) in accordance with the specification in the national environmental standard.
- (4) If the duplication or conflict arises as described in section 43A(5)(c), the local authority must amend the plan or proposed plan to remove the duplication or conflict—
  - (a) without using the process in Schedule 1; and
  - (b) as soon as practicable after the date on which the standard comes into force.
- (5) In every other case of duplication or conflict, the local authority must amend the plan or proposed plan to remove the duplication or conflict—
  - (a) without using the process in Schedule 1; and
  - (b) as soon as practicable after the date on which the standard comes into force.

- (6) A local authority may amend a plan or proposed plan to include a reference to a national environmental standard—
  - (a) without using the process in Schedule 1; and
  - (b) after the date on which the standard comes into force.
- (7) Every local authority and consent authority must observe national environmental standards.
- (8) Every local authority and consent authority must enforce the observance of national environmental standards to the extent to which their powers enable them to do so.

Section 44A: inserted, on 1 October 2009, by section 45 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### *National policy statements*

#### **45 Purpose of national policy statements (other than New Zealand coastal policy statements)**

- (1) The purpose of national policy statements is to state objectives and policies for matters of national significance that are relevant to achieving the purpose of this Act.
- (2) In determining whether it is desirable to prepare a national policy statement, the Minister may have regard to—
  - (a) the actual or potential effects of the use, development, or protection of natural and physical resources;
  - (b) New Zealand's interests and obligations in maintaining or enhancing aspects of the national or global environment;
  - (c) anything which affects or potentially affects any structure, feature, place, or area of national significance;
  - (d) anything which affects or potentially affects more than 1 region;
  - (e) anything concerning the actual or potential effects of the introduction or use of new technology or a process which may affect the environment;
  - (f) anything which, because of its scale or the nature or degree of change to a community or to natural and physical resources, may have an impact on, or is of significance to, New Zealand;
  - (g) anything which, because of its uniqueness, or the irreversibility or potential magnitude or risk of its actual or

potential effects, is of significance to the environment of New Zealand:

- (h) anything which is significant in terms of section 8 (Treaty of Waitangi);
- (i) the need to identify practices (including the measures referred to in section 24(h), relating to economic instruments) to implement the purpose of this Act;
- (j) any other matter related to the purpose of a national policy statement.

Section 45(1): amended, on 20 May 2003, by section 19 of the Resource Management Amendment Act 2003 (2003 No 23).

#### **46 Proposed national policy statement**

If the Minister considers it desirable to issue a national policy statement, the Minister must—

- (a) seek and consider comments from the relevant iwi authorities and the persons and organisations that the Minister considers appropriate; and
- (b) then prepare a proposed national policy statement.

Section 46: substituted, on 20 May 2003, by section 20 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 46(a): amended, on 10 August 2005, by section 31 of the Resource Management Amendment Act 2005 (2005 No 87).

#### **46A Minister chooses process**

- (1) After preparing a proposed national policy statement under sections 45 and 46, the Minister must—
  - (a) use the process set out in sections 47 to 52; or
  - (b) establish, and then use, a process that—
    - (i) gives the public adequate time and opportunity to make a submission on the statement; and
    - (ii) requires a report and recommendations to be made to the Minister on the submissions and the subject matter of the statement; and
    - (iii) incorporates sections 51 and 52 as if their references to a board of inquiry were references to the person who prepares the report and recommendations.
- (2) When choosing between subsection (1)(a) and subsection (1)(b), the Minister may consider the following matters:

- (a) the advantages and disadvantages of having the proposed national policy statement made quickly;
  - (b) the extent to which the policy in the proposed national policy statement differs from the policies in—
    - (i) national environmental standards; and
    - (ia) other national policy statements; and
    - (ii) regional policy statements; and
    - (iii) regional or district plans;
  - (c) the extent and timing of public debate and public consultation that took place on the policy before the proposed national policy statement was prepared;
  - (d) any other relevant matter.
- (3) *[Repealed]*
- (4) A national policy statement prepared after the use of a process established under subsection (1)(b) is a regulation for the purposes of the Regulations (Disallowance) Act 1989, but is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

Section 46A: inserted, on 10 August 2005, by section 32 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 46A(2)(b)(i): substituted, on 1 October 2009, by section 46(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 46A(2)(b)(ia): inserted, on 1 October 2009, by section 46(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 46A(3): repealed, on 1 October 2009, by section 46(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **46B Incorporation of material by reference in national policy statements**

A national policy statement may incorporate material by reference under Schedule 1AA.

Section 46B: inserted, on 10 August 2005, by section 33 of the Resource Management Amendment Act 2005 (2005 No 87).

#### **47 Board of inquiry**

- (1) The Minister must appoint a board of inquiry to inquire into, and report on, the proposed national policy statement.

- (2) The Minister may, as the Minister sees fit,—
  - (a) set terms of reference for the board of inquiry; and
  - (b) set the rate of remuneration to be paid to members of the board of inquiry.
- (3) A member of the board of inquiry is not liable for anything the member does, or omits to do, in good faith in performing or exercising the functions, duties, and powers of the board.  
Section 47: substituted, on 20 May 2003, by section 20 of the Resource Management Amendment Act 2003 (2003 No 23).  
Section 47(3): added, on 1 October 2009, by section 47 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**47A Board of inquiry to suspend consideration or consider additional material**

- (1) The Minister may, at any time before a board of inquiry reports to the Minister under section 51(2), do either or both of the following:
  - (a) direct the board to suspend its inquiry for a specified period or until a specified event occurs (for example, until the Minister provides the board with additional material);
  - (b) provide the board with additional material to consider.
- (2) The Minister must give public notice of a direction under subsection (1)(a), including the reasons for the direction.
- (3) A board of inquiry must suspend its inquiry in accordance with a direction under subsection (1)(a).

Section 47A: inserted, on 1 October 2009, by section 48 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**48 Public notification of proposed national policy statement and inquiry**

- (1) As soon as practicable after its appointment, a board of inquiry shall ensure that notice of the proposed national policy statement and the inquiry is—
  - (a) published in a daily newspaper in each of the cities of Auckland, Wellington, Christchurch, and Dunedin; and
  - (b) served on every local authority in New Zealand and such other persons and authorities as the board of inquiry considers appropriate; and

- (c) given such other public notification as the board of inquiry considers appropriate.
- (2) Every notice for the purposes of this section shall be in the prescribed form and shall state—
  - (a) a description of the proposed national policy statement; and
  - (ab) places at which the proposed national policy statement may be inspected or purchased; and
  - (b) that submissions on the proposed national policy statement may be made in writing by any person; and
  - (c) the closing date for submissions (which shall be not earlier than 20 working days after public notification).

Section 48 heading: amended, on 20 May 2003, by section 21(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 48(1): amended, on 20 May 2003, by section 21(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 48(2)(ab): inserted, on 20 May 2003, by section 21(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 48(2)(b): amended, on 20 May 2003, by section 21(4) of the Resource Management Amendment Act 2003 (2003 No 23).

#### **49 Submissions to board of inquiry**

- (1) Any person may make a submission to the board of inquiry about a proposed national policy statement which is notified in accordance with section 48.
- (2) Every submission shall be in writing, shall be served on the board of inquiry, and shall state whether or not the person making the submission wishes to be heard in respect of the submission, and shall also state any other matter prescribed in regulations made under this Act.

#### **50 Conduct of hearing**

- (1) Sections 39 to 42A apply, with all necessary modifications, in respect of an inquiry by a board of inquiry into a proposed national policy statement as if every reference in those sections to—
  - (a) a consent authority or local authority were a reference to a board of inquiry; and
  - (b) a proposed policy statement were a reference to a proposed national policy statement.



- (2) The board of inquiry must give at least 10 working days' notice of the dates, times, and place of the hearing of the inquiry.
- (3) The Minister has the right to be heard at the hearing, despite anything in sections 39 to 42.
- (4) To avoid doubt, subsection (3) does not limit the right of other persons to be heard under section 40.

Section 50: substituted, on 20 May 2003, by section 22 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 50(3): substituted, on 1 October 2009, by section 49 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 50(4): added, on 1 October 2009, by section 49 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **51 Matters to be considered and board of inquiry's report**

- (1) The board of inquiry must consider the following matters:
  - (a) the matters in Part 2; and
  - (b) the proposed national policy statement; and
  - (c) any submissions received on the proposed national policy statement; and
  - (ca) any additional material provided by the Minister under section 47A(1)(b); and
  - (d) any evidence received; and
  - (e) any other relevant matter.
- (2) After considering the matters, the board of inquiry must arrange for a report and recommendations to be made to the Minister within any terms of reference set by the Minister.

Section 51: substituted, on 20 May 2003, by section 22 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 51(1)(ca): inserted, on 1 October 2009, by section 50 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **51A Withdrawal of proposed national policy statement**

- (1) The Minister may withdraw all or part of a proposed national policy statement at any time before the statement is approved under section 52(2).
- (2) The Minister must give public notice of the withdrawal, including the reasons for the withdrawal.

- (3) If a board of inquiry has not reported to the Minister under section 51(2) before public notice is given—
- (a) withdrawing all matters the board was appointed to inquire into, the board is discharged on and from the date of the notice; or
  - (b) withdrawing any, but not all, of the matters the board was appointed to inquire into, the board must inquire into and report on only the matters that have not been withdrawn, despite any other section of this Act.

Section 51A: inserted, on 1 October 2009, by section 51 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**52 Consideration of recommendations and approval or withdrawal of statement**

- (1) The Minister must consider a report and any recommendations made to him or her by a board of inquiry under section 51 and then may—
- (a) make any changes, or no changes, to the proposed national policy statement as he or she thinks fit; or
  - (b) withdraw all or part of the proposed national policy statement and give public notice of the withdrawal, including the reasons for the withdrawal.
- (2) The Governor-General in Council may, on the recommendation of the Minister, approve a national policy statement.
- (3) The Minister must, as soon as practicable after a national policy statement has been approved,—
- (a) issue the statement by notice in the *Gazette*; and
  - (b) publicly notify the statement and the report in whatever form he or she thinks appropriate and send a copy to every local authority; and
  - (c) provide every person who made a submission on the statement with a summary of the recommendations and a summary of the Minister's decision on the recommendations (including reasons for not adopting any recommendations); and
  - (d) present a copy of the statement to the House of Representatives.

Section 52: substituted, on 20 May 2003, by section 22 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 52 heading: amended, on 1 October 2009, by section 52(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 52(1): substituted, on 1 October 2009, by section 52(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 52(3)(c): substituted, on 1 October 2009, by section 52(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**53 Changes to or review or revocation of national policy statements**

The Minister may review, change, or revoke a national policy statement after using one of the processes referred to in section 46A(1) in relation to the preparation of a national policy statement.

Section 53: amended, on 10 August 2005, by section 34 of the Resource Management Amendment Act 2005 (2005 No 87).

**54 Publication of national policy statements**

When a national policy statement is issued, reviewed, changed, or revoked, the Minister shall—

- (a) publish the statement, review, change, or revocation in whatever form he or she thinks appropriate; and
- (b) send a copy of it to every local authority; and
- (c) give public notice of its issue, review, change, or revocation.

**55 Local authority recognition of national policy statements**

(1) In subsections (2) and (2A), **document** means—

- (a) a regional policy statement; or
- (b) a proposed regional policy statement; or
- (c) a proposed plan; or
- (d) a plan; or
- (e) a variation.

(2) A local authority must amend a document, if a national policy statement directs so,—

- (a) to include specific objectives and policies set out in the statement; or

- (b) so that objectives and policies specified in the document give effect to objectives and policies specified in the statement.
- (2A) The local authority must—
  - (a) make the amendments referred to in subsection (2) without using the process in Schedule 1; and
  - (b) give public notice of the amendments within 5 working days after making them.
- (2B) The local authority must also make all other amendments to a document that are required to give effect to any provision in a national policy statement that affects the document.
- (2C) The local authority must make the amendments referred to in subsection (2B) using the process in Schedule 1.
- (2D) In all cases, the local authority must make the amendments—
  - (a) as soon as practicable; or
  - (b) within the time specified in the national policy statement (if any); or
  - (c) before the occurrence of an event specified in the national policy statement (if any).
- (3) A local authority must also take any other action that is specified in the national policy statement.
- (4) A national policy statement may include transitional provisions for any matter, including its effect on existing matters or proceedings.

Section 55: substituted, on 20 May 2003, by section 23 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 55(1): substituted, on 10 August 2005, by section 35 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 55(2): substituted, on 1 October 2009, by section 53 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 55(2A): substituted, on 1 October 2009, by section 53 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 55(2B): inserted, on 1 October 2009, by section 53 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 55(2C): inserted, on 1 October 2009, by section 53 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 55(2D): inserted, on 1 October 2009, by section 53 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*New Zealand coastal policy statements*

**56 Purpose of New Zealand coastal policy statements**

The purpose of a New Zealand coastal policy statement is to state policies in order to achieve the purpose of this Act in relation to the coastal environment of New Zealand.

**57 Preparation of New Zealand coastal policy statements**

- (1) There shall at all times be at least 1 New Zealand coastal policy statement prepared and recommended by the Minister of Conservation using one of the processes referred to in section 46A(1), as if references in sections 46 to 52 to the Minister were references to the Minister of Conservation and references to a national policy statement were references to a New Zealand coastal policy statement.
- (2) Sections 53, 54, and 55, with all necessary modifications, apply to a New Zealand coastal policy statement as if it were a national policy statement and as if references in those sections to the Minister were references to the Minister of Conservation.

Section 57(1): amended, on 10 August 2005, by section 36 of the Resource Management Amendment Act 2005 (2005 No 87).

**58 Contents of New Zealand coastal policy statements**

A New Zealand coastal policy statement may state objectives and policies about any 1 or more of the following matters:

- (a) national priorities for the preservation of the natural character of the coastal environment of New Zealand, including protection from inappropriate subdivision, use, and development:
- (b) the protection of the characteristics of the coastal environment of special value to the tangata whenua including waahi tapu, tauranga waka, mahinga maataitai, and taonga raranga:
- (c) activities involving the subdivision, use, or development of areas of the coastal environment:

- (d) the Crown's interests in the coastal marine area:
- (e) the matters to be included in 1 or more regional coastal plans in regard to the preservation of the natural character of the coastal environment, including the activities that are required to be specified as restricted coastal activities because the activities—
  - (i) have or are likely to have significant or irreversible adverse effects on the coastal marine area; or
  - (ii) relate to areas in the coastal marine area that have significant conservation value:
- (f) the implementation of New Zealand's international obligations affecting the coastal environment:
- (g) the procedures and methods to be used to review the policies and to monitor their effectiveness:
- (ga) national priorities for maintaining and enhancing public access to and along the coastal marine area:
- (gb) the protection of protected customary rights:
- (h) any other matter relating to the purpose of a New Zealand coastal policy statement.

Section 58: amended, on 10 August 2005, by section 37 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 58(d): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 58(e): substituted, on 1 October 2009, by section 54 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 58(ga): inserted, on 25 November 2004, by section 13 of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 58(gb): inserted, on 25 November 2004, by section 13 of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 58(gb): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

## **58A Incorporation of material by reference in New Zealand coastal policy statements**

A New Zealand coastal policy statement may incorporate material by reference under Schedule 1AA.

Section 58A: inserted, on 10 August 2005, by section 38 of the Resource Management Amendment Act 2005 (2005 No 87).

*Regional policy statements*

**59 Purpose of regional policy statements**

The purpose of a regional policy statement is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.

**60 Preparation and change of regional policy statements**

- (1) There shall at all times be for each region 1 regional policy statement prepared by the regional council in the manner set out in Schedule 1.
- (2) A regional policy statement may be changed in the manner set out in Schedule 1, at the instigation of a Minister of the Crown, the regional council, or any territorial authority within or partly within the region.

**61 Matters to be considered by regional council (policy statements)**

- (1) A regional council shall prepare and change its regional policy statement in accordance with its functions under section 30, the provisions of Part 2, and its duty under section 32 and any regulations.
- (2) In addition to the requirements of section 62(2), when preparing or changing a regional policy statement, the regional council shall have regard to—
  - (a) any—
    - (i) management plans and strategies prepared under other Acts; and
    - (ii) *[Repealed]*
    - (iia) relevant entry in the Historic Places Register; and
    - (iii) regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing); and

- (iv) *[Repealed]*  
to the extent that their content has a bearing on resource management issues of the region; and
  - (b) the extent to which the regional policy statement needs to be consistent with the policy statements and plans of adjacent regional councils.
- (2A) When a regional council is preparing or changing a regional policy statement, it must deal with the following documents, if they are lodged with the council, in the manner specified, to the extent that their content has a bearing on the resource management issues of the region:
  - (a) the council must take into account any relevant planning document recognised by an iwi authority; and
  - (b) in relation to a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, the council must, in accordance with section 93 of that Act,—
    - (i) recognise and provide for the matters in that document, to the extent that they relate to the relevant customary marine title area; and
    - (ii) take into account the matters in that document, to the extent that they relate to a part of the common marine and coastal area outside the customary marine title area of the relevant group.
- (3) In preparing or changing any regional policy statement, a regional council must not have regard to trade competition or the effects of trade competition.

Section 61 heading: amended, on 17 December 1997, by section 11 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 61(2)(a)(ii): repealed, on 1 August 2003, by section 24(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 61(2)(a)(iia): inserted, on 1 July 1993, by section 118(2) of the Historic Places Act 1993 (1993 No 38).

Section 61(2)(a)(iii): substituted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 61(2)(a)(iv): repealed, on 1 August 2003, by section 24(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 61(2A): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).



Section 61(3): added, on 17 December 1997, by section 11 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 61(3): amended, on 1 October 2009, by section 55 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **62 Contents of regional policy statements**

- (1) A regional policy statement must state—
- (a) the significant resource management issues for the region; and
  - (b) the resource management issues of significance to iwi authorities in the region; and
  - (c) the objectives sought to be achieved by the statement; and
  - (d) the policies for those issues and objectives and an explanation of those policies; and
  - (e) the methods (excluding rules) used, or to be used, to implement the policies; and
  - (f) the principal reasons for adopting the objectives, policies, and methods of implementation set out in the statement; and
  - (g) the environmental results anticipated from implementation of those policies and methods; and
  - (h) the processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between regions; and
  - (i) the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land—
    - (i) to avoid or mitigate natural hazards or any group of hazards; and
    - (ii) to prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
    - (iii) to maintain indigenous biological diversity; and
  - (j) the procedures used to monitor the efficiency and effectiveness of the policies or methods contained in the statement; and
  - (k) any other information required for the purpose of the regional council's functions, powers, and duties under this Act.

- (2) If no responsibilities are specified in the regional policy statement for functions described in subsection (1)(i)(i) or (ii), the regional council retains primary responsibility for the function in subsection (1)(i)(i) and the territorial authorities of the region retain primary responsibility for the function in subsection (1)(i)(ii).
- (3) A regional policy statement must not be inconsistent with any water conservation order and must give effect to a national policy statement or New Zealand coastal policy statement.

Section 62: substituted, on 1 August 2003, by section 25 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 62(1)(b): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

### *Regional plans*

#### **63 Purpose of regional plans**

- (1) The purpose of the preparation, implementation, and administration of regional plans is to assist a regional council to carry out any of its functions in order to achieve the purpose of this Act.
- (2) Without limiting subsection (1), the purpose of the preparation, implementation, and administration of regional coastal plans is to assist a regional council, in conjunction with the Minister of Conservation, to achieve the purpose of this Act in relation to the coastal marine area of that region.

#### **64 Preparation and change of regional coastal plans**

- (1) There shall at all times be, for all the coastal marine area of a region, 1 or more regional coastal plans prepared in the manner set out in Schedule 1 and Schedule 1A.
- (2) A regional coastal plan may form part of a regional plan where it is considered appropriate in order to promote the integrated management of a coastal marine area and any related part of the coastal environment.
- (3) Where a regional coastal plan forms part of a regional plan, the Minister of Conservation shall approve only that part which relates to the coastal marine area.

- (4) A regional coastal plan may be changed in the manner set out in Schedule 1 and Schedule 1A.

Section 64(1): substituted, on 7 July 1993, by section 35 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 64(1): amended, on 1 January 2005, by section 9(1) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 64(4): amended, on 1 January 2005, by section 9(2) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**64A Imposition of coastal occupation charges**

- (1) Unless a regional coastal plan or proposed regional coastal plan already addresses coastal occupation charges, in preparing or changing a regional coastal plan or proposed regional coastal plan, a regional council must consider, after having regard to—
- (a) the extent to which public benefits from the coastal marine area are lost or gained; and
  - (b) the extent to which private benefit is obtained from the occupation of the coastal marine area,—
- whether or not a coastal occupation charging regime applying to persons who occupy any part of the common marine and coastal area should be included.
- (2) Where the regional council considers that a coastal occupation charging regime should not be included, a statement to that effect must be included in the regional coastal plan.
- (3) Where the regional council considers that a coastal occupation charging regime should be included, the council must, after having regard to the matters set out in paragraphs (a) and (b) of subsection (1), specify in the regional coastal plan—
- (a) the circumstances when a coastal occupation charge will be imposed; and
  - (b) the circumstances when the regional council will consider waiving (in whole or in part) a coastal occupation charge; and
  - (c) the level of charges to be paid or the manner in which the charge will be determined; and
  - (d) in accordance with subsection (5), the way the money received will be used.

- (4) No coastal occupation charge may be imposed on any person occupying the coastal marine area unless the charge is provided for in the regional coastal plan.
- (4A) A coastal occupation charge must not be imposed on a protected customary rights group or customary marine title group exercising a right under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011.
- (5) Any money received by the regional council from a coastal occupation charge must be used only for the purpose of promoting the sustainable management of the coastal marine area.

Section 64A: inserted, on 17 December 1997, by section 12 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 64A(1): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 64A(4A): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

## **65 Preparation and change of other regional plans**

- (1) A regional council may prepare a regional plan for the whole or part of its region for any function specified in section 30(1)(c), (ca), (e), (f), (fa), (fb), (g), or (ga).
- (1A) A regional council given a direction under section 25A(1) must—
  - (a) prepare a regional plan that implements the direction; or
  - (b) prepare a change to its regional plan in a way that implements the direction; or
  - (c) prepare a variation to its regional plan in a way that implements the direction.
- (2) A plan must be prepared in accordance with Schedule 1.
- (3) Without limiting the power of a regional council to prepare a regional plan at any time, a regional council shall consider the desirability of preparing a regional plan whenever any of the following circumstances or considerations arise or are likely to arise:
  - (a) any significant conflict between the use, development, or protection of natural and physical resources or the avoidance or mitigation of such conflict:

- (b) any significant need or demand for the protection of natural and physical resources or of any site, feature, place, or area of regional significance:
  - (c) any threat from natural hazards or any actual or potential adverse effects of the storage, use, disposal, or transportation of hazardous substances which may be avoided or mitigated:
  - (d) any foreseeable demand for or on natural and physical resources:
  - (e) any significant concerns of tangata whenua for their cultural heritage in relation to natural and physical resources:
  - (f) the restoration or enhancement of any natural and physical resources in a deteriorated state or the avoidance or mitigation of any such deterioration:
  - (g) the implementation of a national policy statement or New Zealand coastal policy statement:
  - (h) any use of land or water that has actual or potential adverse effects on soil conservation or air quality or water quality:
  - (i) any other significant issue relating to any function of the regional council under this Act.
- (4) Any person may request a regional council to prepare or change a regional plan in the manner set out in Schedule 1.
- (5) A regional plan may be changed by the regional council in the manner set out in Schedule 1.
- (6) A regional council must amend a proposed regional plan or regional plan to give effect to a regional policy statement, if—
  - (a) the statement contains a provision to which the plan does not give effect; and
  - (b) one of the following occurs:
    - (i) the statement is reviewed under section 79 and not changed or replaced; or
    - (ii) the statement is reviewed under section 79 and is changed or replaced and the change or replacement becomes operative; or
    - (iii) the statement is changed or varied and becomes operative.
- (7) A local authority must comply with subsection (6)—

- (a) within the time specified in the statement, if a time is specified; or
- (b) as soon as reasonably practicable, in any other case.

Section 65(1): substituted, on 1 August 2003, by section 26 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 65(1): amended, on 10 August 2005, by section 39(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 65(1A): inserted, on 10 August 2005, by section 39(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 65(2): substituted, on 1 August 2003, by section 26 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 65(5): amended, on 7 July 1993, by section 36 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 65(6): added, on 10 August 2005, by section 39(3) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 65(7): added, on 10 August 2005, by section 39(3) of the Resource Management Amendment Act 2005 (2005 No 87).

## **66 Matters to be considered by regional council (plans)**

- (1) A regional council shall prepare and change any regional plan in accordance with its functions under section 30, the provisions of Part 2, a direction given under section 25A(1), its duty under section 32, and any regulations.
- (2) In addition to the requirements of section 67(3) and (4), when preparing or changing any regional plan, the regional council shall have regard to—
  - (a) any proposed regional policy statement in respect of the region; and
  - (b) the Crown's interests in the coastal marine area; and
  - (c) any—
    - (i) management plans and strategies prepared under other Acts; and
    - (ii) *[Repealed]*
    - (iia) relevant entry in the Historic Places Register; and
    - (iii) regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing); and

- (iv) *[Repealed]*  
to the extent that their content has a bearing on resource management issues of the region; and
  - (d) the extent to which the regional plan needs to be consistent with the regional policy statements and plans, or proposed regional policy statements and proposed plans, of adjacent regional councils.
- (2A) When a regional council is preparing or changing a regional plan, it must deal with the following documents, if they are lodged with the council, in the manner specified, to the extent that their content has a bearing on the resource management issues of the region:
  - (a) the council must take into account any relevant planning document recognised by an iwi authority; and
  - (b) in relation to a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011, the council must, in accordance with section 93 of that Act,—
    - (i) recognise and provide for the matters in that document, to the extent that they relate to the relevant customary marine title area; and
    - (ii) take into account the matters in that document, to the extent that they relate to a part of the common marine and coastal area outside the customary marine title area of the relevant group.
- (3) In preparing or changing any regional plan, a regional council must not have regard to trade competition or the effects of trade competition.

Section 66 heading: amended, on 17 December 1997, by section 13 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 66(1): amended, on 10 August 2005, by section 40(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 66(2): amended, on 10 August 2005, by section 40(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 66(2)(b): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 66(2)(c)(ii): repealed, on 1 August 2003, by section 27(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Subsection (2)(c)(iia): inserted, on 1 July 1993, by section 118(2) of the Historic Places Act 1993 (1993 No 38).

Section 66(2)(c)(iii): substituted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 66(2)(c)(iv): repealed, on 1 August 2003, by section 27(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 66(2A): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 66(3): added, on 17 December 1997, by section 13 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 66(3): amended, on 1 October 2009, by section 56 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **67 Contents of regional plans**

- (1) A regional plan must state—
  - (a) the objectives for the region; and
  - (b) the policies to implement the objectives; and
  - (c) the rules (if any) to implement the policies.
- (2) A regional plan may state—
  - (a) the issues that the plan seeks to address; and
  - (b) the methods, other than rules, for implementing the policies for the region; and
  - (c) the principal reasons for adopting the policies and methods; and
  - (d) the environmental results expected from the policies and methods; and
  - (e) the procedures for monitoring the efficiency and effectiveness of the policies and methods; and
  - (f) the processes for dealing with issues—
    - (i) that cross local authority boundaries; or
    - (ii) that arise between territorial authorities; or
    - (iii) that arise between regions; and
  - (g) the information to be included with an application for a resource consent; and
  - (h) any other information required for the purpose of the regional council's functions, powers, and duties under this Act.
- (3) A regional plan must give effect to—
  - (a) any national policy statement; and
  - (b) any New Zealand coastal policy statement; and



- (c) any regional policy statement.
- (4) A regional plan must not be inconsistent with—
  - (a) a water conservation order; or
  - (b) any other regional plan for the region; or
  - (c) a determination or reservation of the chief executive of the Ministry of Fisheries made under section 186E of the Fisheries Act 1996.
- (5) A regional plan must record how a regional council has allocated a natural resource under section 30(1)(fa) or (fb) and (4), if the council has done so.
- (6) A regional plan may incorporate material by reference under Part 3 of Schedule 1.

Section 67: substituted, on 10 August 2005, by section 41 of the Resource Management Amendment Act 2005 (2005 No 87).

## **68 Regional rules**

- (1) A regional council may, for the purpose of—
  - (a) carrying out its functions under this Act (other than those described in paragraphs (a) and (b) of section 30(1)); and
  - (b) achieving the objectives and policies of the plan,—include rules in a regional plan.
- (2) Every such rule shall have the force and effect of a regulation in force under this Act but, to the extent that any such rule is inconsistent with any such regulation, the regulation shall prevail.
- (2A) Rules may be made under this section for the protection of other property (as defined in section 7 of the Building Act 2004) from the effects of surface water, which require persons undertaking building work to achieve performance criteria additional to, or more restrictive than, those specified in the building code as defined in section 7 of the Building Act 2004.
- (3) In making a rule, the regional council shall have regard to the actual or potential effect on the environment of activities, including, in particular, any adverse effect.

- (3A) *[Repealed]*
- (3B) *[Repealed]*
- (4) A rule may specify an activity as a restricted coastal activity only if the rule is in a regional coastal plan and the Minister of Conservation has required the activity to be so specified on the grounds that the activity—
- (a) has or is likely to have significant or irreversible adverse effects on a coastal marine area; or
  - (b) occurs or is likely to occur in an area having significant conservation value.
- (5) A rule may—
- (a) apply throughout the region or a part of the region;
  - (b) make different provision for—
    - (i) different parts of the region; or
    - (ii) different classes of effects arising from an activity;
  - (c) apply all the time or for stated periods or seasons;
  - (d) be specific or general in its application;
  - (e) require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan.
- (6) *[Repealed]*
- (7) Where a regional plan includes a rule relating to maximum or minimum levels or flows or rates of use of water, or minimum standards of water quality or air quality, or ranges of temperature or pressure of geothermal water, the plan may state—
- (a) whether the rule shall affect, under section 130, the exercise of existing resource consents for activities which contravene the rule; and
  - (b) that the holders of resource consents may comply with the terms of the rule, or rules, in stages or over specified periods.
- (8) Where regulations have been made under section 360(1)(ha) deeming rules to be included in a regional coastal plan or proposed regional coastal plan, the relevant regional council shall, as soon as reasonably practicable after the date on which the regulations are made, revoked, or cease to apply to its region,—

- (a) give public notice of the fact that such regulations have been made or revoked or have ceased to apply, as the case may be, and in such detail as the council considers appropriate, generally describe the nature of any rules deemed to be included in the plan or proposed plan by those regulations; and
  - (b) ensure that a copy of any regulations deeming rules to be included in the plan or proposed plan is annexed to, and appropriate annotations are made in, every copy of that plan or proposed plan that is under the regional council's control.
- (9) Notwithstanding anything to the contrary in this section, no rule of a regional coastal plan shall authorise as a permitted activity any of the following activities to which section 15A applies:
  - (a) the dumping in the coastal marine area of any waste or other matter from any ship, aircraft, or offshore installation:
  - (b) the dumping in the coastal marine area of any ship, aircraft, or offshore installation:
  - (c) the incineration in the coastal marine area of any waste or other matter in any marine incineration facility.
- (10) Subject to subsection (9), sections 69 and 70(2) shall, with all necessary modifications, apply to the inclusion of rules in regional coastal plans about the dumping of waste or other matter as if every reference in those provisions to a discharge of a contaminant included a reference to a dumping of waste or other matter.
- (11) A rule may exempt from its coverage an area or class of contaminated land if the rule—
  - (a) provides how the significant adverse effects on the environment that the hazardous substance has are to be remedied or mitigated; or
  - (b) provides how the significant adverse effects on the environment that the hazardous substance is reasonably likely to have are to be avoided; or
  - (c) treats the land as not contaminated for purposes stated in the rule.

Section 68(1): amended, on 1 August 2003, by section 29(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 68(2A): substituted, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 68(3): amended, on 1 August 2003, by section 29(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 68(3A): repealed, on 1 August 2003, by section 29(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 68(3B): repealed, on 1 August 2003, by section 29(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 68(4): amended, on 1 August 2003, by section 29(4) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 68(5)(e): substituted, on 1 August 2003, by section 29(5) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 68(6): repealed, on 17 December 1997, by section 14 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 68(7): added, on 7 July 1993, by section 37(4) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 68(8): added, on 20 August 1998, by section 10 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 68(9): added, on 20 August 1998, by section 10 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 68(10): added, on 20 August 1998, by section 10 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 68(11): added, on 10 August 2005, by section 42 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 68(11): amended, on 1 October 2009, by section 57 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **68A Aquaculture activities**

*[Repealed]*

Section 68A: repealed, on 1 January 2005, by section 11(1) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

## **69 Rules relating to water quality**

### **(1) Where a regional council—**

- (a) provides in a plan that certain waters are to be managed for any purpose described in respect of any of the classes specified in Schedule 3; and
- (b) includes rules in the plan about the quality of water in those waters,—

the rules shall require the observance of the standards specified in that schedule in respect of the appropriate class or classes unless, in the council's opinion, those standards are not adequate or appropriate in respect of those waters in which case the rules may state standards that are more stringent or specific.

- (2) Where a regional council provides in a plan that certain waters are to be managed for any purpose for which the classes specified in Schedule 3 are not adequate or appropriate, the council may state in the plan new classes and standards about the quality of water in those waters.
- (3) Subject to the need to allow for reasonable mixing of a discharged contaminant or water, a regional council shall not set standards in a plan which result, or may result, in a reduction of the quality of the water in any waters at the time of the public notification of the proposed plan unless it is consistent with the purpose of this Act to do so.

#### **70 Rules about discharges**

- (1) Before a regional council includes in a regional plan a rule that allows as a permitted activity—
  - (a) a discharge of a contaminant or water into water; or
  - (b) a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water,—the regional council shall be satisfied that none of the following effects are likely to arise in the receiving waters, after reasonable mixing, as a result of the discharge of the contaminant (either by itself or in combination with the same, similar, or other contaminants):
  - (c) the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials;
  - (d) any conspicuous change in the colour or visual clarity;
  - (e) any emission of objectionable odour;
  - (f) the rendering of fresh water unsuitable for consumption by farm animals;
  - (g) any significant adverse effects on aquatic life.

- (2) Before a regional council includes in a regional plan a rule requiring the adoption of the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of any discharge of a contaminant, the regional council shall be satisfied that, having regard to—
- (a) the nature of the discharge and the receiving environment; and
  - (b) other alternatives, including a rule requiring the observance of minimum standards of quality of the environment,—
- the inclusion of that rule in the plan is the most efficient and effective means of preventing or minimising those adverse effects on the environment.

*Rules relating to discharge of greenhouse gases*

Heading: inserted, on 2 March 2004, by section 6 of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

**70A Application to climate change of rules relating to discharge of greenhouse gases**

Despite section 68(3), when making a rule to control the discharge into air of greenhouse gases under its functions under section 30(1)(d)(iv) or (f), a regional council must not have regard to the effects of such a discharge on climate change, except to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases, either—

- (a) in absolute terms; or
- (b) relative to the use and development of non-renewable energy.

Section 70A: inserted, on 2 March 2004, by section 6 of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

**70B Implementation of national environmental standards**

If a national environmental standard is made to control the effects on climate change of the discharge into air of greenhouse gases, a regional council may make rules that are necessary to implement the standard, provided the rules are no more or less restrictive than the standard.

Section 70B: inserted, on 2 March 2004, by section 6 of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

Section 70B heading: amended, on 10 August 2005, by section 43(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 70B: amended, on 10 August 2005, by section 43(2)(a) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 70B: amended, on 10 August 2005, by section 43(2)(b) of the Resource Management Amendment Act 2005 (2005 No 87).

## **71 Rules about esplanade reserves on reclamation**

*[Repealed]*

Section 71: repealed, on 7 July 1993, by section 38 of the Resource Management Amendment Act 1993 (1993 No 65).

### *District plans*

## **72 Purpose of district plans**

The purpose of the preparation, implementation, and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act.

## **73 Preparation and change of district plans**

- (1) There shall at all times be 1 district plan for each district prepared by the territorial authority in the manner set out in Schedule 1.
- (1A) A district plan may be changed by a territorial authority in the manner set out in Schedule 1.
- (1B) A territorial authority given a direction under section 25A(2) must prepare a change to its district plan in a way that implements the direction.
- (2) Any person may request a territorial authority to change a district plan, and the plan may be changed in the manner set out in Schedule 1.
- (3) A district plan may be prepared in territorial sections.
- (4) A local authority must amend a proposed district plan or district plan to give effect to a regional policy statement, if—
  - (a) the statement contains a provision to which the plan does not give effect; and
  - (b) one of the following occurs:

- (i) the statement is reviewed under section 79 and not changed or replaced; or
  - (ii) the statement is reviewed under section 79 and is changed or replaced and the change or replacement becomes operative; or
  - (iii) the statement is changed or varied and becomes operative.
- (5) A local authority must comply with subsection (4)—
  - (a) within the time specified in the statement, if a time is specified; or
  - (b) as soon as reasonably practicable, in any other case.

Section 73(1A): inserted, on 7 July 1993, by section 39 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 73(1B): inserted, on 10 August 2005, by section 44(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 73(4): added, on 10 August 2005, by section 44(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 73(5): added, on 10 August 2005, by section 44(2) of the Resource Management Amendment Act 2005 (2005 No 87).

#### **74 Matters to be considered by territorial authority**

- (1) A territorial authority shall prepare and change its district plan in accordance with its functions under section 31, the provisions of Part 2, a direction given under section 25A(2), its duty under section 32, and any regulations.
- (2) In addition to the requirements of section 75(3) and (4), when preparing or changing a district plan, a territorial authority shall have regard to—
  - (a) any—
    - (i) proposed regional policy statement; or
    - (ii) proposed regional plan of its region in regard to any matter of regional significance or for which the regional council has primary responsibility under Part 4; and
  - (b) any—
    - (i) management plans and strategies prepared under other Acts; and
    - (ii) *[Repealed]*
    - (iia) relevant entry in the Historic Places Register; and



- (iii) regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiapure, mahinga mataitai, or other non-commercial Maori customary fishing),—  
to the extent that their content has a bearing on resource management issues of the district; and
  - (c) the extent to which the district plan needs to be consistent with the plans or proposed plans of adjacent territorial authorities.
- (2A) A territorial authority, when preparing or changing a district plan, must take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district.
- (3) In preparing or changing any district plan, a territorial authority must not have regard to trade competition or the effects of trade competition.

Section 74(1): amended, on 10 August 2005, by section 45(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 74(2): amended, on 10 August 2005, by section 45(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 74(2)(a): substituted, on 17 December 1997, by section 15(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 74(2)(b)(ii): repealed, on 1 August 2003, by section 31(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 74(2)(b)(iia): inserted, on 1 July 1993, by section 118(2) of the Historic Places Act 1993 (1993 No 38).

Section 74(2)(b)(iii): substituted, on 1 October 1996, by section 316(1) of the Fisheries Act 1996 (1996 No 88).

Section 74(2A): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 74(3): added, on 17 December 1997, by section 15(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 74(3): amended, on 1 October 2009, by section 58 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **75 Contents of district plans**

- (1) A district plan must state—
  - (a) the objectives for the district; and

- (b) the policies to implement the objectives; and
  - (c) the rules (if any) to implement the policies.
- (2) A district plan may state—
- (a) the significant resource management issues for the district; and
  - (b) the methods, other than rules, for implementing the policies for the district; and
  - (c) the principal reasons for adopting the policies and methods; and
  - (d) the environmental results expected from the policies and methods; and
  - (e) the procedures for monitoring the efficiency and effectiveness of the policies and methods; and
  - (f) the processes for dealing with issues that cross territorial authority boundaries; and
  - (g) the information to be included with an application for a resource consent; and
  - (h) any other information required for the purpose of the territorial authority's functions, powers, and duties under this Act.
- (3) A district plan must give effect to—
- (a) any national policy statement; and
  - (b) any New Zealand coastal policy statement; and
  - (c) any regional policy statement.
- (4) A district plan must not be inconsistent with—
- (a) a water conservation order; or
  - (b) a regional plan for any matter specified in section 30(1).
- (5) A district plan may incorporate material by reference under Part 3 of Schedule 1.

Section 75: substituted, on 10 August 2005, by section 46 of the Resource Management Amendment Act 2005 (2005 No 87).

## **76 District rules**

- (1) A territorial authority may, for the purpose of—
- (a) carrying out its functions under this Act; and
  - (b) achieving the objectives and policies of the plan,—
- include rules in a district plan.
- (2) Every such rule shall have the force and effect of a regulation in force under this Act but, to the extent that any such rule

is inconsistent with any such regulation, the regulation shall prevail.

- (2A) Rules may be made under this section, for the protection of other property (as defined in section 7 of the Building Act 2004) from the effects of surface water, which require persons undertaking building work to achieve performance criteria additional to, or more restrictive than, those specified in the building code as defined in section 7 of the Building Act 2004.
- (3) In making a rule, the territorial authority shall have regard to the actual or potential effect on the environment of activities including, in particular, any adverse effect.
- (3A) *[Repealed]*
- (3B) *[Repealed]*
- (4) A rule may—
  - (a) apply throughout a district or a part of a district:
  - (b) make different provision for—
    - (i) different parts of the district; or
    - (ii) different classes of effects arising from an activity:
  - (c) apply all the time or for stated periods or seasons:
  - (d) be specific or general in its application:
  - (e) require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan.
- (4A) However, a rule must not prohibit or restrict the felling, trimming, damaging, or removal of any tree or group of trees in an urban environment unless the tree or group of trees is—
  - (a) specifically identified in the plan; or
  - (b) located within an area in the district that—
    - (i) is a reserve (within the meaning of section 2(1) of the Reserves Act 1977); or
    - (ii) is subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.
- (4B) In subsection (4A), **urban environment** means an allotment no greater than 4 000 m<sup>2</sup>—

- (a) that is connected to a reticulated water supply system and a reticulated sewerage system; and
  - (b) on which is a building used for industrial or commercial purposes, or a dwellinghouse.
- (5) A rule may exempt from its coverage an area or class of contaminated land if the rule—
  - (a) provides how the significant adverse effects on the environment that the hazardous substance has are to be remedied or mitigated; or
  - (b) provides how the significant adverse effects on the environment that the hazardous substance is reasonably likely to have are to be avoided; or
  - (c) treats the land as not contaminated for purposes stated in the rule.

Section 76(1): amended, on 1 August 2003, by section 33(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 76(2A): substituted, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 76(3): amended, on 1 August 2003, by section 33(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 76(3A): repealed, on 1 August 2003, by section 33(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 76(3B): repealed, on 1 August 2003, by section 33(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 76(4)(e): substituted, on 1 August 2003, by section 33(4) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 76(4A): inserted, on 1 October 2009, by section 59(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 76(4B): inserted, on 1 October 2009, by section 59(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 76(5): added, on 10 August 2005, by section 47 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 76(5): amended, on 1 October 2009, by section 59(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **77 Rules about esplanade reserves on subdivision and road stopping**

- (1) Subject to Part 2 and having regard to section 229 (purposes of esplanade reserves), a territorial authority may include a rule

- in its district plan which provides, in respect of any allotment of less than 4 hectares created when land is subdivided,—
- (a) that an esplanade reserve which is required to be set aside shall be of a width greater or less than 20 metres:
  - (b) that section 230 shall not apply:
  - (c) that instead of an esplanade reserve, an esplanade strip of the width specified in the rule may be created under section 232.
- (2) A territorial authority may include a rule in its district plan which provides that in respect of any allotment of 4 hectares or more created when land is subdivided, esplanade reserves or esplanade strips, of the width specified in the rule, shall be set aside or created, as the case may be, under section 230(5).
- (3) A territorial authority may include in its district plan a rule which provides—
- (a) that esplanade reserves, required to be set aside under section 345(3) of the Local Government Act 1974, shall be of a width greater or less than 20 metres:
  - (b) that section 345(3) of the Local Government Act 1974 shall not apply.
- (4) Rules made under this section shall make provision for such matters as are appropriate in the circumstances of the district, and may apply—
- (a) generally; or
  - (b) in a particular locality; or
  - (c) in particular circumstances.

Section 77: substituted, on 7 July 1993, by section 41 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 77(4): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Additional provisions for regional rules and  
district rules*

Heading: inserted, on 1 August 2003, by section 34 of the Resource Management Amendment Act 2003 (2003 No 23).

**77A Power to make rules to apply to classes of activities and specify conditions**

- (1) A local authority may—
  - (a) categorise activities as belonging to one of the classes of activity described in subsection (2); and
  - (b) make rules in its plan or proposed plan for each class of activity that apply—
    - (i) to each activity within the class; and
    - (ii) for the purposes of that plan or proposed plan; and
  - (c) specify conditions in a plan or proposed plan, but only if the conditions relate to the matters described in section 108 or 220.
- (2) An activity may be—
  - (a) a permitted activity; or
  - (b) a controlled activity; or
  - (c) a restricted discretionary activity; or
  - (d) a discretionary activity; or
  - (e) a non-complying activity; or
  - (f) a prohibited activity.
- (3) Subsection (1)(b) is subject to section 77B.

Section 77A: substituted, on 1 October 2009, by section 60 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**77B Duty to include certain rules in relation to controlled or restricted discretionary activities**

- (1) Subsection (2) applies if a local authority makes a rule in its plan or proposed plan classifying an activity as a controlled activity.
- (2) The local authority must specify in the rule the matters over which it has reserved control in relation to the activity.
- (3) Subsection (4) applies if a local authority makes a rule in its plan or proposed plan classifying an activity as a restricted discretionary activity.
- (4) The local authority must specify in the rule the matters over which it has restricted its discretion in relation to the activity.

Section 77B: substituted, on 1 October 2009, by section 60 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**77C Certain activities to be treated as discretionary activities or prohibited activities**

*[Repealed]*

Section 77C: repealed, on 1 October 2009, by section 61 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**77D Rules specifying activities for which consent applications must be notified or are precluded from being notified**

A local authority may make a rule specifying the activities for which the consent authority—

- (a) must give public notification of an application for a resource consent:
- (b) is precluded from giving public notification of an application for a resource consent:
- (c) is precluded from giving limited notification of an application for a resource consent.

Section 77D: substituted, on 1 October 2009, by section 62 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Miscellaneous provisions*

**78 Withdrawal of proposed policy statements and plans**

*[Repealed]*

Section 78: repealed, on 7 July 1993, by section 42 of the Resource Management Amendment Act 1993 (1993 No 65).

**78A Combined regional and district documents**

*[Repealed]*

Section 78A: repealed, on 1 October 2009, by section 63 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**79 Review of policy statements and plans**

- (1) A local authority must commence a review of a provision of any of the following documents it has, if the provision has not been a subject of a proposed policy statement or plan, a review, or a change by the local authority during the previous 10 years:

- (a) a regional policy statement:
  - (b) a regional plan:
  - (c) a district plan.
- (2) If, after reviewing the provision, the local authority considers that it requires alteration, the local authority must, in the manner set out in Part 1 of Schedule 1 and this Part, propose to alter the provision.
- (3) If, after reviewing the provision, the local authority considers that it does not require alteration, the local authority must still publicly notify the provision—
  - (a) as if it were a change; and
  - (b) in the manner set out in Part 1 of Schedule 1 and this Part.
- (4) Without limiting subsection (1), a local authority may, at any time, commence a full review of any of the following documents it has:
  - (a) a regional policy statement:
  - (b) a regional plan:
  - (c) a district plan.
- (5) In carrying out a review under subsection (4), the local authority must review all the sections of, and all the changes to, the policy statement or plan regardless of when the sections or changes became operative.
- (6) If, after reviewing the statement or plan under subsection (4), the local authority considers that it requires alteration, the local authority must alter the statement or plan in the manner set out in Part 1 of Schedule 1 and this Part.
- (7) If, after reviewing the statement or plan under subsection (4), the local authority considers that it does not require alteration, the local authority must still publicly notify the statement or plan—
  - (a) as if it were a proposed policy statement or plan; and
  - (b) in the manner set out in Part 1 of Schedule 1 and this Part.
- (8) A provision of a policy statement or plan, or the policy statement or plan, as the case may be, does not cease to be operative because the provision, statement, or plan is due for review or is being reviewed under this section.



- (9) The obligations on a local authority under this section are in addition to its duty to monitor under section 35.

Section 79: substituted, on 1 October 2009, by section 64 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**79A Circumstance when further review required**

*[Repealed]*

Section 79A: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**79B Consequence of review under section 79A**

*[Repealed]*

Section 79B: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**80 Combined regional and district documents**

- (1) Local authorities may prepare, implement, and administer the combined regional and district documents as set out in subsections (2) to (6).
- (2) A local authority may prepare, implement, and administer a document that meets the requirements of 2 or more of the following:
- (a) a regional policy statement:
  - (b) a regional plan, including a regional coastal plan:
  - (c) a district plan.
- (3) Two or more territorial authorities may prepare, implement, and administer a combined district plan for the whole or any part of their combined districts.
- (4) Two or more regional councils may prepare, implement, and administer a document that meets the requirements of the following:
- (a) a regional plan, including a regional coastal plan, for the whole or any part of their combined regions:
  - (b) a regional policy statement, for the whole or any part of their combined regions:
  - (c) a regional plan, including a regional coastal plan, and a regional policy statement, for the whole or any part of their combined regions.

- (5) One or more regional councils or territorial authorities may prepare, implement, and administer a combined regional and district plan for the whole or any part of their respective regions or districts.
- (6) A regional council and all the territorial authorities within the region may prepare, implement, and administer a document that meets the requirements of the following:
  - (a) a regional policy statement for the region; and
  - (b) a regional plan, including a regional coastal plan, for the region; and
  - (c) either—
    - (i) a district plan for each of the territorial authorities; or
    - (ii) a combined district plan for their combined districts.
- (7) Without limiting subsections (1) to (6), local authorities must consider the preparation of the appropriate combined document under this section whenever significant cross-boundary issues relating to the use, development, or protection of natural and physical resources arise or are likely to arise.
- (8) A combined document prepared under this section must clearly identify—
  - (a) the provisions of the document that are the regional policy statement, the regional plan, the regional coastal plan, or the district plan, as the case may be; and
  - (b) the objectives, policies, and methods set out or described in the document that have the effect of being provisions of the regional policy statement; and
  - (c) which local authority is responsible for observing, and enforcing the observance of, each provision of the document.
- (9) A combined document prepared under this section—
  - (a) must be prepared in accordance with Schedule 1; and
  - (b) when approved by a local authority is deemed, for the purposes of this Act, to be a plan or regional policy statement separately prepared and approved by that authority for its region or district, as the case may be.

- (10) Subsection (9)(b) applies whether or not the combined document is approved by any of the other local authorities concerned.
- (11) Clause 30 of Schedule 7 of the Local Government Act 2002 applies to the appointment and conduct of any joint committee set up for the purposes of preparing, implementing, or administering a combined document under this section.

Section 80: substituted, on 1 October 2009, by section 66 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **81 Boundary adjustments**

- (1) Where the boundaries of any region or district are altered, and any area comes within the jurisdiction of a different local authority,—
  - (a) the plan or proposed plan that applied to the area before the alteration of the boundaries shall continue to apply to that area and shall, in so far as it applies to the area, be deemed to be part of the plan or proposed plan of the different local authority:
  - (b) any activity that may, before the alteration of the boundaries, have been undertaken under section 19 may continue to be undertaken as if the alteration of the boundaries had not taken place.
- (2) Where the boundaries of any district are altered so as to include within that district any area not previously within the boundaries of any other district, no person may use that land unless expressly allowed by a resource consent, until a district plan provides otherwise.
- (3) A territorial authority shall, as soon as practicable but within 2 years, make such changes to its district plans as it considers necessary to cover any area that comes within its jurisdiction, and, after the changes are made, this section shall cease to apply.

Section 81(1)(b): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 81(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**82 Disputes**

- (1) Subsection (2) applies if there is a dispute about—
- (a) whether there is an inconsistency between a water conservation order and a regional policy statement or a plan; or
  - (b) whether there is an inconsistency between a regional policy statement or a regional plan and a district plan (including any rules of a plan) on a matter of regional significance; or
  - (c) whether a regional policy statement or a plan gives effect to a national policy statement or New Zealand coastal policy statement.
- (2) A Minister or local authority responsible for a relevant national policy statement, New Zealand coastal policy statement, policy statement, plan, or order may refer a dispute to the Environment Court for a decision resolving the matter.
- (3) If a dispute about whether there is an inconsistency described in subsection (1)(a) or (b) is referred to the court, and the court considers that there is an inconsistency, the court must order the authority responsible for the policy statement or plan to remove the inconsistency by initiating a change to the policy statement or plan using the process in Schedule 1.
- (4) If a dispute about whether a regional policy statement or a plan gives effect to a national policy statement or New Zealand coastal policy statement is referred to the court, and the court considers that the policy statement or plan does not give effect to the other policy statement, the court must order the authority responsible for the policy statement or plan to amend it in accordance with section 55.
- (5) However, the court does not need to make an order under subsection (3) or (4) if it considers that the inconsistency, or failure to give effect to the other policy statement, is of minor significance that does not affect the general intent and purpose of the policy statement, plan, or water conservation order concerned.
- (6) To avoid doubt, giving effect to a policy statement includes giving effect to it by complying with a direction described in section 55(2).

Section 82: substituted, on 1 August 2003, by section 36 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 82(3): substituted, on 1 October 2009, by section 67 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 82(4): added, on 1 October 2009, by section 67 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 82(5): added, on 1 October 2009, by section 67 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 82(6): added, on 1 October 2009, by section 67 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **82A Dispute relating to review under section 79A**

*[Repealed]*

Section 82A: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

## **83 Procedural requirements deemed to be observed**

A policy statement or plan that is held out by a local authority as being operative shall be deemed to have been prepared and approved in accordance with Schedule 1 and shall not be challenged except by an application for an enforcement order under section 316(3).

## **84 Local authorities to observe their own policy statements and plans**

- (1) While a policy statement or a plan is operative, the regional council or territorial authority concerned, and every consent authority, shall observe and, to the extent of its authority, enforce the observance of the policy statement or plan.
- (2) No purported grant of a resource consent, and no waiver or sufferance or departure from a policy statement or plan, whether written or otherwise, shall, unless authorised by this Act, have effect in so far as it is contrary to subsection (1).

## **85 Compensation not payable in respect of controls on land**

- (1) An interest in land shall be deemed not to be taken or injuriously affected by reason of any provision in a plan unless otherwise provided for in this Act.
- (2) Notwithstanding subsection (1), any person having an interest in land to which any provision or proposed provision of a plan or proposed plan applies, and who considers that the provi-

sion or proposed provision would render that interest in land incapable of reasonable use, may challenge that provision or proposed provision on those grounds—

- (a) in a submission made under Part 1 of Schedule 1 in respect of a proposed plan or change to a plan; or
  - (b) in an application to change a plan made under clause 21 of Schedule 1.
- (3) Where, having regard to Part 3 (including the effect of section 9(3)) and the effect of subsection (1), the Environment Court determines that a provision or proposed provision of a plan or a proposed plan renders any land incapable of reasonable use, and places an unfair and unreasonable burden on any person having an interest in the land, the court, on application by any such person to change a plan made under clause 21 of Schedule 1, may—
- (a) in the case of a plan or proposed plan (other than a regional coastal plan), direct the local authority to modify, delete, or replace the provision; and
  - (b) in the case of a regional coastal plan, report its findings to the applicant, the regional council concerned, and the Minister of Conservation, which report may include a direction to the regional council to modify, delete, or replace the provision.
- (4) Any direction given or report made under subsection (3) shall have effect under this Act as if it were made or given under clause 15 of Schedule 1.
- (5) In subsections (2) and (3), a **provision of a plan or proposed plan** does not include a designation or a heritage order or a requirement for a designation or heritage order.
- (6) In subsections (2) and (3), the term **reasonable use**, in relation to any land, includes the use or potential use of the land for any activity whose actual or potential effects on any aspect of the environment or on any person other than the applicant would not be significant.
- (7) Nothing in subsection (3) limits the powers of the Environment Court under clause 15 of Schedule 1 on an appeal under clause 14.

Section 85(2)(a): amended, on 7 July 1993, by section 43(1)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 85(2)(b): amended, on 7 July 1993, by section 43(1)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 85(3): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 85(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 85(3): amended, on 7 July 1993, by section 43(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 85(7): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 85(7): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

*Plan must not allow activity that prevents  
protected customary rights*

Heading: inserted, on 17 January 2005, by section 21 of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Heading: amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**85A Plan or proposed plan must not include certain rules**

A plan or proposed plan must not include a rule that describes an activity as a permitted activity if that activity will, or is likely to, have an adverse effect that is more than minor on a protected customary right carried out under Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011.

Section 85A: inserted, on 17 January 2005, by section 21 of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 85A: amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**85B Process to apply if plan or proposed plan does not comply with section 85A**

- (1) If a protected customary rights group considers that a rule in a plan or proposed plan does not comply with section 85A, the holder may—
  - (a) make a submission to the local authority concerned under clause 6 of Schedule 1; or
  - (b) request a change under clause 21 of Schedule 1; or

- (c) apply to the Environment Court in accordance with section 293A(3) for a change to a rule in the plan or proposed plan.
- (2) A local authority or the Environment Court, as the case may be, in determining whether or not a rule in a plan or proposed plan complies with section 85A, must consider the following matters:
  - (a) the effects of the proposed activity on the exercise of a protected customary right; and
  - (b) the area that the proposed activity would have in common with the protected customary right; and
  - (c) the degree to which the proposed activity must be carried out to the exclusion of other activities; and
  - (d) the degree to which the exercise of a protected customary right must be carried out to the exclusion of other activities; and
  - (e) whether the protected customary right can be exercised only in a particular area.

Section 85B: inserted, on 17 January 2005, by section 21 of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 85B(1): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 85B(1)(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 85B(2)(a): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 85B(2)(b): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 85B(2)(d): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 85B(2)(e): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

## **86 Power to acquire land**

- (1) In addition to any power it may have to acquire land for any public work which it is authorised to undertake, a regional council or territorial authority may, while its plan is operative, acquire by agreement under the Public Works Act 1981 any land (including any interest in land) in its region or district, if, in accordance with the plan, the regional council or territorial



authority considers it necessary or expedient to do so for any of the following purposes:

- (a) terminating or preventing any non-complying or prohibited activity in relation to that land:
  - (b) facilitating activity in relation to that land that is in accordance with the objectives and policies of the plan.
- (2) Except as provided in section 185 and section 198, nothing in any plan shall impose on any regional council or territorial authority any obligation to acquire any land.
- (3) Every person having any interest in land taken for any purpose authorised by subsection (1) shall be entitled to all compensation which that person would be entitled to if the land had been acquired for a public work under the Public Works Act 1981.

*Legal effect of rules*

Heading: inserted, on 1 October 2009, by section 68 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**86A Purpose of sections 86B to 86G**

- (1) The purpose of sections 86B to 86G is to specify when a rule in a proposed plan or change described in section 86B(6) has legal effect.
- (2) Except to the extent that subsection (1) applies, sections 86B to 86G do not limit or affect the weight that a consent authority gives to objectives, policies, and other issues, reasons, or methods in plans before the plan becomes operative.

Section 86A: inserted, on 1 October 2009, by section 68 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**86B When rules in proposed plans and changes have legal effect**

- (1) A rule in a proposed plan has legal effect only once a decision on submissions relating to the rule is made and publicly notified under clause 10(4) of Schedule 1, except if—
- (a) subsection (3) applies; or
  - (b) the Environment Court, in accordance with section 86D, orders the rule to have legal effect from a different date (being the date specified in the court order); or

- (c) the local authority concerned resolves that the rule has legal effect only once the proposed plan becomes operative in accordance with clause 20 of Schedule 1.
- (2) However, subsection (1)(c) applies only if—
  - (a) the local authority makes the decision before publicly notifying the proposed plan under clause 5 of Schedule 1; and
  - (b) the public notification includes the decision; and
  - (c) the decision is not subsequently rescinded (in which case the rule has legal effect from a date determined in accordance with section 86C).
- (3) A rule in a proposed plan has immediate legal effect if the rule—
  - (a) protects or relates to water, air, or soil (for soil conservation); or
  - (b) protects areas of significant indigenous vegetation; or
  - (c) protects areas of significant habitats of indigenous fauna; or
  - (d) protects historic heritage; or
  - (e) provides for or relates to an aquaculture management area.
- (4) For the purposes of subsection (2)(c), a decision is **rescinded** if—
  - (a) the local authority publicly notifies that the decision is rescinded; and
  - (b) the public notice includes a statement of the decision to which it relates and the date on which the decision was made.
- (5) For the purposes of subsection (3), **immediate legal effect** means legal effect on and from the date on which the proposed plan containing the rule is publicly notified under clause 5 of Schedule 1.
- (6) A rule in a change to a plan proposed by a person under Part 2 of Schedule 1 that provides for or relates to an aquaculture management area and that has been accepted by the local authority under clause 25(2)(b) of Schedule 1 has legal effect on and from the date the change is publicly notified under clause 26(b) of that schedule.

Section 86B: inserted, on 1 October 2009, by section 68 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**86C When rule has legal effect if decision to delay its effect is rescinded**

- (1) This section applies to a rule to which section 86B(1)(c) applies that is rescinded (within the meaning of subsection (4) of that section).
- (2) The rule has legal effect from the later of—
  - (a) the day after the date on which the local authority concerned publicly notifies that the decision in relation to the rule is rescinded;
  - (b) the day that a decision on submissions relating to the rule is made and publicly notified under clause 10(4) of Schedule 1.

Section 86C: inserted, on 1 October 2009, by section 68 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**86D Environment Court may order rule to have legal effect from date other than standard date**

- (1) In this section, **rule** means a rule—
  - (a) in a proposed plan or change; and
  - (b) that is not a rule of a type described in section 86B(3)(a) to (e) or (6).
- (2) A local authority may apply before or after the proposed plan is publicly notified under clause 5 of Schedule 1 to the Environment Court for a rule to have legal effect from a date other than the date on which the decision on submissions relating to the rule is made and publicly notified under clause 10(4) of Schedule 1.
- (3) If the court grants the application, the order must specify the date from which the rule is to have legal effect, being a date no earlier than the later of—
  - (a) the date that the proposed plan is publicly notified; and
  - (b) the date of the court order.

Section 86D: inserted, on 1 October 2009, by section 68 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**86E Local authorities must identify rules having early or delayed legal effect**

- (1) A local authority must clearly identify any rule in a proposed plan that has legal effect from a date other than the date on which the decision on submissions relating to the rule is made and publicly notified under clause 10(4) of Schedule 1—
  - (a) at the time the proposed plan is notified under clause 5 of the schedule; or
  - (b) as soon as practicable after the date is determined, if the rule concerned is the subject of an application under section 86D and the application is not determined before the proposed plan is notified.
- (2) A local authority must clearly identify any rule of a type described in section 86B(6) at the time the change containing the rule is publicly notified.
- (3) The identification of a rule in a proposed plan or change under subsection (1) or (2)—
  - (a) does not form part of the proposed plan or change; and
  - (b) may be removed, without any further authority than this subsection, by the local authority once the plan or change becomes operative in accordance with clause 20 of Schedule 1.

Section 86E: inserted, on 1 October 2009, by section 68 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**86F When rules in proposed plans must be treated as operative**

A rule in a proposed plan must be treated as operative (and any previous rule as inoperative) if the time for making submissions or lodging appeals on the rule has expired and, in relation to the rule,—

- (a) no submissions in opposition have been made or appeals have been lodged; or
- (b) all submissions in opposition and appeals have been determined; or
- (c) all submissions in opposition have been withdrawn and all appeals withdrawn or dismissed.

Section 86F: inserted, on 1 October 2009, by section 68 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**86G Rule that has not taken legal effect or become operative excluded from references to rule in this Act and regulations made under this Act**

- (1) A reference in this Act or in any regulations made under it to a rule in a proposed plan or a change does not include a reference to a rule in the proposed plan or change that—
  - (a) has not taken legal effect in accordance with section 86B; or
  - (b) has not become operative under section 86F.
- (2) Subsection (1) applies subject to any express provision to the contrary in this Act.

Section 86G: inserted, on 1 October 2009, by section 68 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **Part 6**

### **Resource consents**

**87AA This Part subject to Part 6A**

This Part applies subject to Part 6A.

Section 87AA: inserted, on 26 March 2002, by section 7 of the Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

**87 Types of resource consents**

In this Act, the term **resource consent** means any of the following:

- (a) a consent to do something that otherwise would contravene section 9 or section 13 (in this Act called a **land use consent**):
- (b) a consent to do something that otherwise would contravene section 11 (in this Act called a **subdivision consent**):
- (c) a consent to do something in a coastal marine area that otherwise would contravene any of sections 12, 14, 15, 15A, and 15B (in this Act called a **coastal permit**):
- (d) a consent to do something (other than in a coastal marine area) that otherwise would contravene section 14 (in this Act called a **water permit**):
- (e) a consent to do something (other than in a coastal marine area) that otherwise would contravene section 15 (in this Act called a **discharge permit**).

Section 87(c): amended, on 20 August 1998, by section 17 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 87(c): amended, on 20 August 1998, by section 11 of the Resource Management Amendment Act 1994 (1994 No 105).

### **87A Classes of activities**

- (1) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a permitted activity, a resource consent is not required for the activity if it complies with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
- (2) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a controlled activity, a resource consent is required for the activity and—
  - (a) the consent authority must grant a resource consent except if—
    - (i) section 106 applies; or
    - (ii) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011 applies; and
  - (b) the consent authority's power to impose conditions on the resource consent is restricted to the matters over which control is reserved (whether in its plan or proposed plan, a national environmental standard, or otherwise); and
  - (c) the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
- (3) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a restricted discretionary activity, a resource consent is required for the activity and—
  - (a) the consent authority's power to decline a consent, or to grant a consent and to impose conditions on the consent, is restricted to the matters over which discretion is restricted (whether in its plan or proposed plan, a national environmental standard, or otherwise); and

- (b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
- (4) If an activity is described in this Act, regulations (including any national environmental standard), a plan, or a proposed plan as a discretionary activity, a resource consent is required for the activity and—
  - (a) the consent authority may decline the consent or grant the consent with or without conditions; and
  - (b) if granted, the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
- (5) If an activity is described in this Act, regulations (including a national environmental standard), a plan, or a proposed plan as a non-complying activity, a resource consent is required for the activity and the consent authority may—
  - (a) decline the consent; or
  - (b) grant the consent, with or without conditions, but only if the consent authority is satisfied that the requirements of section 104D are met and the activity must comply with the requirements, conditions, and permissions, if any, specified in the Act, regulations, plan, or proposed plan.
- (6) If an activity is described in this Act, regulations (including a national environmental standard), a plan, or a proposed plan as a prohibited activity,—
  - (a) no application for a resource consent may be made for the activity; and
  - (b) the consent authority must not grant a consent for it.

Section 87A: inserted, on 1 October 2009, by section 69 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 87A(2)(a): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

#### **87B Certain activities to be treated as discretionary activities or prohibited activities**

- (1) An application for a resource consent for an activity must, with the necessary modifications, be treated as an application for a resource consent for a discretionary activity if—

- (a) Part 3 requires a resource consent to be obtained for the activity and there is no plan or proposed plan, or no relevant rule in a plan or proposed plan; or
  - (b) a plan or proposed plan requires a resource consent to be obtained for the activity, but does not classify the activity as controlled, restricted discretionary, discretionary, or non-complying under section 77A; or
  - (c) a rule in a proposed plan describes the activity as a prohibited activity and the rule has not become operative.
- (2) Prospecting, exploring, or mining for Crown owned minerals in the internal waters (as defined in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977) of the Coromandel Peninsula must be treated as a prohibited activity.
  - (3) Subsection (2) does not apply to prospecting, exploring, or mining activities set out in section 61(1A) of the Crown Minerals Act 1991.
  - (4) An activity prohibited by section 105(2)(b) of the Historic Places Act 1993 must be treated as a prohibited activity.

Section 87B: inserted, on 1 October 2009, by section 69 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Streamlining decision-making on resource  
consents*

Heading: inserted, on 1 October 2009, by section 69 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**87C Sections 87D to 87I apply to resource consent applications**

- (1) Sections 87D to 87I apply when an applicant wants one of the following applications to be determined by the Environment Court instead of by a consent authority:
  - (a) an application for a resource consent that has been notified;
  - (b) an application to change or cancel a condition of a resource consent that has been notified.
- (2) If the application is called in under section 142(2), sections 87D to 87I cease to apply to it.

Section 87C: inserted, on 1 October 2009, by section 69 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).



**87D Request for application to go directly to Environment Court**

- (1) The applicant must request the relevant consent authority to allow the application to be determined by the Environment Court instead of by the consent authority.
- (2) The applicant must make the request in the period—
  - (a) starting on the day on which the application is made; and
  - (b) ending 5 working days after the date on which the period for submissions on the application closes.
- (3) The applicant must make the request electronically or in writing on the prescribed form.

Section 87D: inserted, on 1 October 2009, by section 69 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**87E Consent authority's decision on request**

- (1) If the consent authority determines under section 88(3) that the application is incomplete, it must return the request with the application without making a decision on the request. Section 88(4) and (5) apply to the application.
- (2) If the consent authority receives the request after it has determined that the application will not be notified, it must return the request.
- (3) If the consent authority receives the request before it has determined whether the application will be notified, it must defer its decision on the request until after it has decided whether to notify the application and then apply either subsection (4) or (5).
- (4) If the consent authority decides not to notify the application, it must return the request.
- (5) If the consent authority decides to notify the application, it must give the applicant its decision on the request within 15 working days after the date of the decision on notification.
- (6) In any other case, the consent authority must give the applicant its decision on the request within 15 working days after receiving the request.
- (7) No submitter has a right to be heard by the consent authority on a request.

- (8) If the consent authority returns or declines the request, it must give the applicant its reasons, in writing or electronically, at the same time as it gives the applicant its decision.
- (9) If the consent authority declines the request under subsection (5) or (6) the applicant may object to the consent authority under section 357A(1)(e).

Section 87E: inserted, on 1 October 2009, by section 69 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **87F Consent authority's subsequent processing**

- (1) If the consent authority does not grant the applicant's request under section 87D, the consent authority must continue to process the application.
- (2) If the consent authority grants the applicant's request under section 87D, the consent authority must continue to process the application and must comply with subsections (3) to (5).
- (3) The consent authority must prepare a report on the application within the longer of the following periods:
  - (a) the period that ends 20 working days after the date on which the period for submissions on the application closes;
  - (b) the period that ends 20 working days after the date on which the authority decides to grant the request.
- (4) In the report, the consent authority may—
  - (a) address issues that are set out in sections 104 to 112 to the extent that they are relevant to the application; and
  - (b) suggest conditions that it considers should be imposed if the Environment Court grants the application.
- (5) As soon as is reasonably practicable after the report is prepared, the consent authority must provide a copy to—
  - (a) the applicant; and
  - (b) every person who made a submission on the application.

Section 87F: inserted, on 1 October 2009, by section 69 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **87G Environment Court determines application**

- (1) Subsection (2) applies to an applicant who—
  - (a) receives a report provided under section 87F(5); and

- (b) continues to want the application to be determined by the Environment Court instead of by a consent authority.
- (2) The applicant must,—
  - (a) within 10 working days after receiving the report, lodge with the Environment Court a notice of motion in the prescribed form specifying the orders sought and the grounds upon which the application is made, and a supporting affidavit as to the matters giving rise to the application; and
  - (b) as soon as is reasonably practicable after lodging the notice of motion, serve a copy of the notice of motion and affidavit on—
    - (i) the consent authority that granted the applicant's request under section 87D; and
    - (ii) every person who made a submission to the authority on the application; and
  - (c) tell the Registrar of the Environment Court when the copies have been served.
- (3) A consent authority served under subsection (2)(b)(i) must, without delay, provide the Environment Court with—
  - (a) the application to which the notice of motion relates; and
  - (b) the authority's report on the application; and
  - (c) all the submissions on the application that the authority received; and
  - (d) all the information and reports on the application that the authority was supplied with.
- (4) Section 274 applies to the notice of motion.
- (5) Part 11 applies to proceedings under this section.
- (6) If considering a matter that is an application for a resource consent, the court must apply sections 104 to 112 and 138A as if it were a consent authority.
- (7) If considering a matter that is an application for a change to or cancellation of conditions of a resource consent, the court must apply sections 104 to 112 as if—

- (a) it were a consent authority and the application were an application for resource consent for a discretionary activity; and
- (b) every reference to a resource consent and to the effects of the activity were, respectively, a reference to the change or cancellation of a condition and the effects of the change or cancellation.

Section 87G: inserted, on 1 October 2009, by section 69 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **87H Residual powers of consent authority**

The consent authority that would have determined the application had the Environment Court not done so under section 87G has all the functions, duties, and powers in relation to a resource consent granted by the court as if it had granted the consent itself.

Section 87H: inserted, on 1 October 2009, by section 69 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **87I When consent authority must determine application**

- (1) This section applies when—
  - (a) an applicant receives a report under section 87F(5); and
  - (b) either—
    - (i) the applicant advises the authority that the applicant does not intend to lodge a notice of motion with the Environment Court under section 87G(2); or
    - (ii) the applicant does not lodge a notice of motion with the Environment Court under section 87G(2); and
  - (c) the applicant continues to want the application determined.
- (2) The application must be determined by the consent authority.

Section 87I: inserted, on 1 October 2009, by section 69 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Application for resource consent*

**88 Making an application**

- (1) A person may apply to the relevant consent authority for a resource consent.
- (2) An application must—
  - (a) be made in the prescribed form and manner; and
  - (b) include, in accordance with Schedule 4, an assessment of environmental effects in such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.
- (3) If an application does not include an adequate assessment of environmental effects or the information required by regulations, a consent authority may, within 5 working days after the application was first lodged, determine that the application is incomplete and return the application, with written reasons for the determination, to the applicant.
- (4) If, after an application has been returned as incomplete, that application is lodged again with the consent authority, that application is to be treated as a new application.
- (5) Sections 357 to 358 apply to a determination that an application is incomplete.

Section 88: substituted, on 1 August 2003, by section 37 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 88(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 88(3): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 88(4): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 88(5): amended, on 10 August 2005, by section 50 of the Resource Management Amendment Act 2005 (2005 No 87).

**88A Description of type of activity to remain the same**

- (1) Subsection (1A) applies if—
  - (a) an application for a resource consent has been made under section 88 or 145; and

- (b) the type of activity (being controlled, restricted, discretionary, or non-complying) for which the application was made, or that the application was treated as being made under section 87B, is altered after the application was first lodged as a result of—
    - (i) a proposed plan being notified; or
    - (ii) a decision being made under clause 10(1) of Schedule 1; or
    - (iii) otherwise.
- (1A) The application continues to be processed, considered, and decided as an application for the type of activity that it was for, or was treated as being for, at the time the application was first lodged.
- (2) Notwithstanding subsection (1), any plan or proposed plan which exists when the application is considered must be had regard to in accordance with section 104(1)(b).
- (3) *[Repealed]*

Section 88A: inserted, on 17 December 1997, by section 18 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 88A(1): substituted, on 1 August 2003, by section 38(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 88A(1)(a): amended, on 1 October 2009, by section 70(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 88A(1)(b): amended, on 1 October 2009, by section 70(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 88A(1)(b)(ii): amended, on 1 October 2009, by section 70(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 88A(1A): inserted, on 1 August 2003, by section 38(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 88A(2): amended, on 1 August 2003, by section 38(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 88A(3): repealed, on 1 October 2009, by section 70(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **88B Time limits from which time periods are excluded**

- (1) Subsection (2) lists the time limits from which certain time periods must be excluded. Subsection (3) lists the time periods that must be excluded from the time limits.

- (2) The time limits are those in the following provisions:
- (a) section 95, which deals with the time limit for notification:
  - (b) section 41B(6) and (7), which deal with the time limits for the commencement of a hearing if a direction is given under section 41B:
  - (c) section 87F(3), which deals with the time limit for the preparation of a consent authority report where an application is to be determined by the Environment Court under section 87G:
  - (d) section 101(2), which deals with the time limits for the commencement of a hearing if no direction is given under section 41B:
  - (e) section 115, which deals with the time limit for notification of the decision on an application for a resource consent:
  - (f) section 173, which deals with the time limit for notification of the decision on a designation:
  - (g) section 198D(3), which deals with the time limit for the preparation of a territorial authority report where an application is to be determined by the Environment Court under section 198E:
  - (h) section 198J(2), which deals with the time limit for the preparation of a territorial authority report where an application is to be determined by the Environment Court under section 198K.
- (3) The time periods are those described in the following provisions:
- (a) section 88C(2), (4), and (6):
  - (b) section 88D(2), (4), (6), (8), (10), (12), and (14):
  - (c) section 88E(2), (4), and (6).
- (4) Despite subsection (3), any applicable time periods described in section 88D(2) and (8) must not be excluded from the time limits in section 95.

Section 88B: substituted, on 1 October 2009, by section 71 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**88C Excluded time periods relating to provision of further information**

- (1) Subsection (2) applies when—
  - (a) an authority has requested an applicant, under section 92(1), to provide further information on the applicant's application; and
  - (b) the request is the first request made by the authority to the applicant under that provision—
    - (i) at all; or
    - (ii) after the closing date for submissions.
- (2) The period that must be excluded from every applicable provision listed in section 88B(2) is the period—
  - (a) starting with the date of the request under section 92(1); and
  - (b) ending as follows:
    - (i) if the applicant provides the information within 15 working days, the date on which the applicant provides the information:
    - (ii) if the applicant agrees within 15 working days to provide the information and provides the information, the date on which the applicant provides the information:
    - (iii) if the applicant agrees within 15 working days to provide the information and does not provide the information, the date set under section 92A(2)(a):
    - (iv) if the applicant does not respond to the request within 15 working days, the date on which the period of 15 working days ends:
    - (v) if the applicant refuses within 15 working days to provide the information, the date on which the applicant refuses to provide the information.
- (3) Subsection (4) applies when—
  - (a) an authority has notified an applicant, under section 92(2)(b), of its wish to commission a report; and
  - (b) the applicant agrees, under section 92B(1), to the commissioning of the report.
- (4) The period that must be excluded from every applicable provision listed in section 88B(2) is the period—



- (a) starting with the date of the notification under section 92(2)(b); and
  - (b) ending with the date on which the authority receives the report.
- (5) Subsection (6) applies when—
  - (a) an authority has notified an applicant, under section 92(2)(b), of its wish to commission a report; and
  - (b) the applicant does not agree, under section 92B(1), to the commissioning of the report.
- (6) The period that must be excluded from every applicable provision listed in section 88B(2) is the period—
  - (a) starting with the date of the notification under section 92(2)(b); and
  - (b) ending with the earlier of the following:
    - (i) the date on which the period of 15 working days ends; and
    - (ii) the date on which the authority receives the applicant's refusal, under section 92B(1), to agree to the commissioning of the report.

Section 88C: substituted, on 1 October 2009, by section 71 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**88D Excluded time periods relating to direct referral (for resource consents and also for notices of requirement)**

- (1) Subsection (2) applies when an applicant makes a request under section 87D(1).
- (2) The period that must be excluded from every applicable provision listed in section 88B(2) (except section 88B(2)(a)) is the period—
  - (a) starting with the date on which the consent authority receives the request; and
  - (b) ending with the earliest of the following:
    - (i) if section 87E(5) applies, the date on which the 15 working days end;
    - (ii) if section 87E(6) applies, the date on which the 15 working days end;
    - (iii) the date on which the authority gives the applicant the authority's decision on the request.

- (3) Subsection (4) applies when an applicant objects to a consent authority against the authority's decision not to grant the applicant's request under section 87D.
- (4) The period that must be excluded from every applicable provision listed in section 88B(2) is the period—
  - (a) starting with the date on which the consent authority receives the objection; and
  - (b) ending with the date on which the authority notifies the applicant of its decision on the objection.
- (5) Subsection (6) applies when an applicant receives a report provided under section 87F(5)(a).
- (6) The period that must be excluded from every applicable provision listed in section 88B(2) is the period—
  - (a) starting with the date on which the consent authority provides the report; and
  - (b) ending with the earlier of the following:
    - (i) the date on which the 10 working days referred to in section 87G(2)(a) end; and
    - (ii) the date on which the applicant notifies the authority, in writing or electronically, that the applicant does not intend to lodge a notice of motion under section 87G(2)(a) (if the applicant chooses to notify the authority of this).
- (7) Subsection (8) applies when a requiring authority or heritage protection authority makes a request under section 198B(1).
- (8) The period that must be excluded from every applicable provision listed in section 88B(2) (except section 88B(2)(a)) is the period—
  - (a) starting with the date on which the territorial authority receives the request; and
  - (b) ending with the earliest of the following:
    - (i) if section 198C(4) applies, the date on which the 15 working days end;
    - (ii) if section 198C(5) applies, the date on which the 15 working days end;
    - (iii) the date on which the authority gives the requiring authority or heritage protection authority the authority's decision on the request.

- (9) Subsection (10) applies when a requiring authority or heritage protection authority objects to a territorial authority against the authority's decision not to grant the requiring authority's or heritage protection authority's request under section 198B(1).
- (10) The period that must be excluded from every applicable provision listed in section 88B(2) is the period—
  - (a) starting with the date on which the territorial authority receives the objection; and
  - (b) ending with the date on which the authority notifies the requiring authority or heritage protection authority of its decision on the objection.
- (11) Subsection (12) applies when a requiring authority or heritage protection authority receives a report provided under section 198D(5)(a).
- (12) The period that must be excluded from every applicable provision listed in section 88B(2) is the period—
  - (a) starting with the date on which the territorial authority provides the report; and
  - (b) ending with the earlier of the following:
    - (i) the date on which the 10 working days referred to in section 198E(2)(a) end; and
    - (ii) the date on which the requiring authority or heritage protection authority notifies the territorial authority, in writing or electronically, that the requiring authority or heritage protection authority does not intend to lodge a notice of motion under section 198E(2)(a) (if the requiring authority or heritage protection authority chooses to notify the territorial authority of this).
- (13) Subsection (14) applies when a territorial authority provides a report under section 198J(4).
- (14) The period that must be excluded from every applicable provision listed in section 88B(2) is the period—
  - (a) starting with the date on which the territorial authority provides the report; and
  - (b) ending with the earlier of the following:
    - (i) the date on which the 10 working days referred to in section 198K(1)(a) end; and

- (ii) the date on which the territorial authority decides not to lodge a notice of motion under section 198K(1)(a) (if it decides this).

Section 88D: inserted, on 1 October 2009, by section 71 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**88E Excluded time periods relating to other matters**

- (1) Subsection (2) applies when a consent authority determines, under section 91(1), not to proceed with the notification or hearing of an application for a resource consent.
- (2) The period that must be excluded from every applicable provision listed in section 88B(2) is the period—
  - (a) starting with the date of the notification of the determination to the applicant under section 91(2); and
  - (b) ending with—
    - (i) the date of the receipt of applications for the resource consents that the authority considers, under section 91(1)(b), should be applied for; or
    - (ii) the date of an Environment Court order revoking the authority's determination.
- (3) Subsection (4) applies when an applicant tries, for the purposes of sections 95E(3) and 95F, to obtain the approval of persons who may be adversely affected.
- (4) The period that must be excluded from every applicable provision listed in section 88B(2) is the time taken by the applicant in trying to obtain the approvals, whether or not they are obtained.
- (5) Subsection (6) applies when a consent authority refers persons to mediation under section 99A.
- (6) The period that must be excluded from every applicable provision listed in section 88B(2) is the period—
  - (a) starting with the date of the reference; and
  - (b) ending with the earlier of the following:
    - (i) the date on which one of the persons referred to mediation gives the other persons referred and the mediator a written notice withdrawing the person's consent to the mediation; and
    - (ii) the date on which the mediator reports the outcome of the mediation to the authority.

Section 88E: inserted, on 1 October 2009, by section 71 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**89 Applications to territorial authorities for resource consents where land is in coastal marine area**

- (1) Where an application for a subdivision consent is made to a territorial authority and any part, or all, of the land proposed to be subdivided is in the coastal marine area, the territorial authority shall decide the application as if the whole of that land were part of the district, and the provisions of this Act shall apply accordingly.

- (2) Where—

- (a) an application is made to a territorial authority for a resource consent for an activity which an applicant intends to undertake within the district of that authority once the proposed location of the activity has been reclaimed; and
- (b) on the date the application is made the proposed location of the activity is still within the coastal marine area,—

then the authority may hear and decide the application as if the application related to an activity within its district, and the provisions of this Act shall apply accordingly.

- (3) Section 116(2) shall apply to every resource consent that is granted in accordance with subsection (2).

Section 89 heading: amended, on 7 July 1993, by section 45 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 89(1): amended, on 7 July 1993, by section 45(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 89(1): amended, on 7 July 1993, by section 45(b) of the Resource Management Amendment Act 1993 (1993 No 65).

**89A Applications affecting navigation to be referred to Maritime New Zealand**

- (1) This section applies to the following applications:
- (a) an application for a coastal permit to do any of the following in the coastal marine area:
- (i) reclaim land:
- (ii) build a structure:

- (iii) do or maintain works for the improvement, management, protection, or utilisation of a harbour:
  - (b) an application for a coastal permit to remove boulders, mud, sand, shell, shingle, silt, stone, or other similar material from the coastal marine area:
  - (c) an application for a land use consent to enter onto or pass across the surface of water in a navigable lake or river:
  - (d) an application for a land use consent to use the bed of a navigable lake or river.
- (2) The local authority must send a copy of the application to Maritime New Zealand.
- (3) Maritime New Zealand must report to the local authority on any navigation-related matters that Maritime New Zealand considers relevant to the application, including any conditions that it considers should be included in the consent for navigation-related purposes.
- (4) If Maritime New Zealand wants to report, it must do so within 15 working days after receiving a copy of the application. If it fails to report within that time limit, the local authority may take the failure as an indication that Maritime New Zealand has nothing to report.
- (5) The local authority must—
- (a) ensure that a copy of Maritime New Zealand's report is provided to—
    - (i) the applicant; and
    - (ii) every person who has made a submission on the application:
  - (b) take the report into account in its consideration of the application.

Section 89A: inserted, on 1 October 2009, by section 72 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **90 Distribution of application to other authorities**

*[Repealed]*

Section 90: repealed, on 1 August 2003, by section 40 of the Resource Management Amendment Act 2003 (2003 No 23).

**91 Deferral pending application for additional consents**

- (1) A consent authority may determine not to proceed with the notification or hearing of an application for a resource consent if it considers on reasonable grounds that—
  - (a) other resource consents under this Act will also be required in respect of the proposal to which the application relates; and
  - (b) it is appropriate, for the purpose of better understanding the nature of the proposal, that applications for any 1 or more of those other resource consents be made before proceeding further.
- (2) Where a consent authority makes a determination under subsection (1), it shall forthwith notify the applicant of the determination.
- (3) The applicant may apply to the Environment Court for an order directing that any determination under this section be revoked.

Section 91(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

*Further information*

**92 Further information, or agreement, may be requested**

- (1) A consent authority may, at any reasonable time before the hearing of an application for a resource consent or before the decision to grant or refuse the application (if there is no hearing), by written notice, request the applicant for the consent to provide further information relating to the application.
- (2) At any reasonable time before a hearing or, if no hearing is to be held, before the decision is made, a consent authority may commission any person to prepare a report on any matter relating to an application, including information provided by the applicant in the application or under this section, if all the following apply:
  - (a) the activity for which the resource consent is sought may, in the authority's opinion, have a significant adverse environmental effect; and
  - (b) the applicant is notified before the authority commissions the report; and
  - (c) the applicant does not refuse, under section 92B(1), to agree to the commissioning of the report.

- (3) The consent authority must notify the applicant, in writing, of its reasons for—
  - (a) requesting further information under subsection (1); or
  - (b) wanting to commission a report under subsection (2).
- (3A) The information or report must be available at the office of the consent authority no later than 10 working days before the hearing of an application. This subsection does not apply if—
  - (a) the applicant refuses, under section 92A, to provide the further information; or
  - (b) the applicant refuses, under section 92B, to agree to the commissioning of the report.
- (3B) The consent authority must, as soon as is reasonably practicable after receiving the information or report, give written or electronic notice to every person who made a submission on the application that the information or report is available at the authority's office.
- (4) This section does not apply to reports prepared under section 42A.
- (5) *[Repealed]*

Section 92: substituted, on 1 August 2003, by section 41 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 92 heading: substituted, on 10 August 2005, by section 52(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 92(1): amended, on 10 August 2005, by section 52(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 92(2): substituted, on 10 August 2005, by section 52(3) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 92(3): substituted, on 10 August 2005, by section 52(3) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 92(3A): inserted, on 10 August 2005, by section 52(3) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 92(3B): inserted, on 1 October 2009, by section 73(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 92(5): repealed, on 1 October 2009, by section 73(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).



**92A Responses to request**

- (1) An applicant who receives a request under section 92(1) must, within 15 working days of the date of the request, take one of the following options:
  - (a) provide the information; or
  - (b) tell the consent authority in a written notice that the applicant agrees to provide the information; or
  - (c) tell the consent authority in a written notice that the applicant refuses to provide the information.
- (2) A consent authority that receives a written notice under subsection (1)(b) must—
  - (a) set a reasonable time within which the applicant must provide the information; and
  - (b) tell the applicant in a written notice the date by which the applicant must provide the information.
- (3) The consent authority must consider the application under section 104 even if the applicant—
  - (a) does not respond to the request; or
  - (b) agrees to provide the information under subsection (1)(b) but does not do so; or
  - (c) refuses to provide the information under subsection (1)(c).
- (4) *[Repealed]*
- (5) *[Repealed]*
- (6) *[Repealed]*

Section 92A: inserted, on 10 August 2005, by section 53 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 92A(3): substituted, on 1 October 2009, by section 74 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 92A(4): repealed, on 1 October 2009, by section 74 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 92A(5): repealed, on 1 October 2009, by section 74 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 92A(6): repealed, on 1 October 2009, by section 74 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**92B Responses to notification**

- (1) An applicant who receives a notification under section 92(2)(b) must, within 15 working days of the date of the notification, tell the consent authority in a written notice whether the applicant agrees to the commissioning of the report.
- (2) The consent authority must consider the application under section 104 even if the applicant—
  - (a) does not respond in accordance with subsection (1); or
  - (b) refuses to agree to the commissioning of the report.
- (3) *[Repealed]*
- (4) *[Repealed]*
- (5) *[Repealed]*

Section 92B: inserted, on 10 August 2005, by section 53 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 92B(2): substituted, on 1 October 2009, by section 75 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 92B(3): repealed, on 1 October 2009, by section 75 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 92B(4): repealed, on 1 October 2009, by section 75 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 92B(5): repealed, on 1 October 2009, by section 75 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Notification of applications*  
*[Repealed]*

Heading: repealed, on 1 August 2003, by section 41 of the Resource Management Amendment Act 2003 (2003 No 23).

**93 When public notification of consent applications is required**

*[Repealed]*

Section 93: repealed, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**94 When public notification of consent applications is not required**

*[Repealed]*

Section 94: repealed, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**94A Forming opinion as to whether adverse effects are minor or more than minor**

*[Repealed]*

Section 94A: repealed, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**94B Forming opinion as to who may be adversely affected**

*[Repealed]*

Section 94B: repealed, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**94C Public notification if applicant requests or if special circumstances exist**

*[Repealed]*

Section 94C: repealed, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**94D When public notification and service requirements may be varied**

*[Repealed]*

Section 94D: repealed, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Public notification and limited notification of applications*

Heading: inserted, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**95 Time limit for public notification or limited notification**

A consent authority must, within 10 working days after the day an application for a resource consent is first lodged,—

- (a) decide whether to give public or limited notification of the application; and
- (b) notify the application if it decides to do so.

Section 95: substituted, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**95A Public notification of consent application at consent authority's discretion**

- (1) A consent authority may, in its discretion, decide whether to publicly notify an application for a resource consent for an activity.
- (2) Despite subsection (1), a consent authority must publicly notify the application if—
  - (a) it decides (under section 95D) that the activity will have or is likely to have adverse effects on the environment that are more than minor; or
  - (b) the applicant requests public notification of the application; or
  - (c) a rule or national environmental standard requires public notification of the application.
- (3) Despite subsections (1) and (2)(a), a consent authority must not publicly notify the application if—
  - (a) a rule or national environmental standard precludes public notification of the application; and
  - (b) subsection (2)(b) does not apply.
- (4) Despite subsection (3), a consent authority may publicly notify an application if it decides that special circumstances exist in relation to the application.

Section 95A: inserted, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**95B Limited notification of consent application**

- (1) If a consent authority does not publicly notify an application for a resource consent for an activity, it must decide (under sections 95E and 95F) if there are any affected persons, an affected protected customary rights group, or affected customary marine title group in relation to the activity.
- (2) The consent authority must give limited notification of the application to any affected person unless a rule or national environmental standard precludes limited notification of the application.

- (3) The consent authority must give limited notification of the application to an affected protected customary rights group or affected customary title group even if a rule or national environmental standard precludes public or limited notification of the application.
- (4) In subsections (1) and (3), the requirements relating to an affected customary marine title group apply only in the case of applications for accommodated activities.

Section 95B: inserted, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 95B(1): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 95B(3): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 95B(4): added, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**95C Public notification of consent application after request for further information or report**

- (1) Despite section 95A(1), a consent authority must publicly notify an application for a resource consent if—
  - (a) it has not already decided whether to give public or limited notification of the application; and
  - (b) subsection (2) or (3) applies.
- (2) This subsection applies if the consent authority requests further information on the application under section 92(1), but the applicant—
  - (a) does not provide the information before the deadline concerned; or
  - (b) refuses to provide the information.
- (3) This subsection applies if the consent authority notifies the applicant under section 92(2)(b) that it wants to commission a report, but the applicant—
  - (a) does not respond before the deadline concerned; or
  - (b) refuses to agree to the commissioning of the report.
- (4) This section applies despite any rule or national environmental standard that precludes public or limited notification of the application.

Section 95C: inserted, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**95D Consent authority decides if adverse effects likely to be more than minor**

A consent authority that is deciding, for the purpose of section 95A(2)(a), whether an activity will have or is likely to have adverse effects on the environment that are more than minor—

- (a) must disregard any effects on persons who own or occupy—
  - (i) the land in, on, or over which the activity will occur; or
  - (ii) any land adjacent to that land; and
- (b) may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and
- (c) in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion; and
- (d) must disregard trade competition and the effects of trade competition; and
- (e) must disregard any effect on a person who has given written approval to the relevant application.

Section 95D: inserted, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**95E Consent authority decides if person is affected person**

- (1) A consent authority must decide that a person is an affected person, in relation to an activity, if the activity's adverse effects on the person are minor or more than minor (but are not less than minor).
- (2) The consent authority, in making its decision,—
  - (a) may disregard an adverse effect of the activity on the person if a rule or national environmental standard permits an activity with that effect; and
  - (b) in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity on the person that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion; and

- (c) must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.
- (3) Despite anything else in this section, the consent authority must decide that a person is not an affected person if—
  - (a) the person has given written approval to the activity and has not withdrawn the approval in a written notice received by the authority before the authority has decided whether there are any affected persons; or
  - (b) it is unreasonable in the circumstances to seek the person's written approval.

Section 95E: inserted, on 1 October 2009, by section 76 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **95F Status of protected customary rights group**

A consent authority must decide that a protected customary rights group is an affected protected customary rights group, in relation to an activity in the protected customary rights area relevant to that group, if—

- (a) the activity may have adverse effects on a protected customary right carried out in accordance with the requirements of Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011; and
- (b) the protected customary rights group has not given written approval for the activity or has withdrawn approval for the activity in a written notice received by the consent authority before the authority has made a decision under this section.

Section 95F: substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

#### **95G Status of customary marine title group**

A consent authority must decide that a customary marine title group is an affected customary marine title group, in relation to an accommodated activity in the customary marine title area relevant to that group, if—

- (a) the activity may have adverse effects on the exercise of the rights applying to a customary marine title group

under subpart 3 of Part 3 of the Marine and Coastal Area (Takutai Moana) Act 2011; and

- (b) the customary marine title group has not given written approval for the activity in a written notice received by the consent authority before the authority has made a decision under this section.

Section 95G: inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

### *Submissions on applications*

#### **96 Making submissions**

- (1) If an application for a resource consent is publicly notified, a person described in subsection (2) may make a submission about it to the consent authority.
- (2) Any person may make a submission, but the person's right to make a submission is limited by section 308B if the person is a person A as defined in section 308A and the applicant is a person B as defined in section 308A.
- (3) If an application for a resource consent is the subject of limited notification, a person described in subsection (4) may make a submission about it to the consent authority.
- (4) A person served with notice of the application may make a submission, but the person's right to make a submission is limited by section 308B if the person is a person A as defined in section 308A and the applicant is a person B as defined in section 308A.
- (5) A submission must be in the prescribed form.
- (6) A submission must be served—
  - (a) on the consent authority within the time allowed by section 97; and
  - (b) on the applicant as soon as is reasonably practicable after service on the consent authority.
- (7) A submission may state whether—
  - (a) it supports the application; or
  - (b) it opposes the application; or
  - (c) it is neutral.

Section 96: substituted, on 1 October 2009, by section 77 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).



**97 Time limit for submissions**

The closing date for serving submissions on a consent authority shall be the 20th working day after public notification or limited notification of the relevant application.

Section 97: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**98 Advice of submissions to applicant**

As soon as reasonably practicable after the closing date for submissions, the consent authority shall provide the applicant with a list of all submissions received by it.

*Pre-hearing meetings and mediation*

Heading: amended, on 10 August 2005, by section 57(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**99 Pre-hearing meetings**

- (1) A consent authority may invite or require a person who has made an application for a resource consent and some or all of the persons who have made submissions on the application to attend a meeting with the following:
  - (a) each other or one another; and
  - (b) the authority; and
  - (c) anyone else whose presence at the meeting the authority considers appropriate.
- (2) The authority may invite or require persons to attend a meeting—
  - (a) either—
    - (i) at the request of 1 or more of the persons; or
    - (ii) on its own initiative; and
  - (b) only for the purpose of—
    - (i) clarifying a matter or issue; or
    - (ii) facilitating resolution of a matter or issue.
- (3) The authority may require persons to attend a meeting only with the consent of the person who made the application.
- (4) A person who is a member, delegate, or officer of the authority, and who has the power to make the decision on the application that is the subject of the meeting, may attend and participate if—

- (a) the authority is satisfied that its member, delegate, or officer should be able to attend and participate; and
  - (b) all the persons at the meeting agree.
- (5) The chairperson of the meeting must, before the hearing, prepare a report that—
  - (a) does not include anything communicated or made available at the meeting on a without prejudice basis; and
  - (b) for the parties who attended the meeting,—
    - (i) sets out the issues that were agreed; and
    - (ii) sets out the issues that are outstanding; and
  - (c) for all the parties,—
    - (i) may set out the nature of the evidence that the parties are to call at the hearing; and
    - (ii) may set out the order in which the parties are to call the evidence at the hearing; and
    - (iii) may set out a proposed timetable for the hearing.
- (6) The chairperson of the meeting must, before the hearing, send the report to the authority and all the parties so that they have it at least 5 working days before the hearing.
- (7) The consent authority must have regard to the report in making its decision on the application.
- (8) If a person required to attend a meeting fails to do so, and does not give a reasonable excuse, the consent authority may decline—
  - (a) to process the person's application; or
  - (b) to consider the person's submission.
- (9) If the consent authority declines, under subsection (8)(a), to process the person's application,—
  - (a) the person may not appeal under section 120 against the decision; and
  - (b) the person may object under section 357A against the decision.
- (10) If the consent authority declines, under subsection (8)(b), to consider the person's submission, the person—
  - (a) may not appeal under section 120 against—
    - (i) the decision to decline to consider the submission; or
    - (ii) the decision on the application; and

- (b) may not become under section 274 a party to proceedings; and
- (c) may object under section 357A against the decision to decline to consider the submission.

Section 99: substituted, on 10 August 2005, by section 57(2) of the Resource Management Amendment Act 2005 (2005 No 87).

#### **99A Mediation**

- (1) A consent authority may refer to mediation a person who has made an application for a resource consent and some or all of the persons who have made submissions on the application.
- (2) The authority may exercise the power in subsection (1)—
  - (a) either—
    - (i) at the request of one of the persons; or
    - (ii) on its own initiative; and
  - (b) only with the consent of all the persons being referred; and
  - (c) only for the purpose of mediating between the persons on a matter or issue.
- (3) Mediation under this section must be conducted by—
  - (a) a person to whom the authority delegates, under section 34A, the power to mediate; or
  - (b) a person whom the authority appoints to mediate, if the authority is the person who has made an application for a resource consent.
- (4) The person who conducts the mediation must report the outcome of the mediation to the consent authority.

Section 99A: inserted, on 10 August 2005, by section 58 of the Resource Management Amendment Act 2005 (2005 No 87).

### *Hearings*

#### **100 Obligation to hold a hearing**

A hearing need not be held in accordance with this Act in respect of an application for a resource consent unless—

- (a) the consent authority considers that a hearing is necessary; or
- (b) either the applicant or a person who made a submission in respect of that application has requested to be heard

and has not subsequently advised that he or she does not wish to be heard.

Section 100: amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

**100A Hearing by commissioner if requested by applicant or submitter**

- (1) This section applies in relation to an application for a resource consent if—
  - (a) the application is notified; and
  - (b) in accordance with section 100, a hearing of the application is to be held.
- (2) The applicant, or a person who makes a submission on the application, may request in writing that a local authority delegate its functions, powers, and duties required to hear and decide the application in accordance with subsection (4).
- (3) The request must be made no later than 5 working days after the closing date for submissions on the application.
- (4) If the local authority receives a request under subsection (2), it must delegate, under section 34A(1), its functions, powers, and duties required to hear and decide the application to 1 or more hearings commissioners who are not members of the local authority.

Section 100A: inserted, on 1 October 2009, by section 78 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**101 Hearing date and notice**

- (1) If a hearing of an application for a resource consent is to be held, the consent authority shall fix a commencement date and time, and the place, of the hearing.
- (2) The date for the commencement of the hearing is as follows:
  - (a) if section 87I, 198G, or 198M applies, the date must be no more than 15 working days after the date on which the authority knows that the section applies:
  - (b) if none of sections 87I, 198G, and 198M applies and the application was not notified, the date must be within 25 working days after the date the application was first lodged with the authority:

- (c) if none of sections 87I, 198G and 198M applies and the application was notified, the date must be within 25 working days after the closing date for submissions on the application.
- (2A) *[Repealed]*
- (3) The consent authority shall give at least 10 working days' notice of the commencement date and time, and the place, of a hearing of an application for a resource consent to—
  - (a) the applicant; and
  - (b) every person who made a submission on the application stating his or her wish to be heard and who has not subsequently advised that he or she does not wish to be heard.
- (4) Where a joint hearing is to be held under section 102 the consent authorities concerned shall ensure that every applicant and every person who made a submission is aware of the joint hearing.

Section 101(2): substituted, on 1 October 2009, by section 79 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 101(2A): repealed, on 1 October 2009, by section 79 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 101(4): amended, on 7 July 1993, by section 51(3) of the Resource Management Amendment Act 1993 (1993 No 65).

## **102 Joint hearings by 2 or more consent authorities**

- (1) Where applications for resource consents in relation to the same proposal have been made to 2 or more consent authorities, and those consent authorities have decided to hear the applications, the consent authorities shall jointly hear and consider those applications unless—
  - (a) all the consent authorities agree that the applications are sufficiently unrelated that a joint hearing is unnecessary; and
  - (b) the applicant agrees that a joint hearing need not be held.
- (2) When a joint hearing is to be held, the regional council for the area concerned shall be responsible for notifying the hearing, setting the procedure, and providing administrative services,

- unless the consent authorities involved in the hearing agree that another authority should be so responsible.
- (3) Where 2 or more consent authorities jointly hear applications for resource consents, they shall jointly decide those applications unless—
- (a) any application is for a restricted coastal activity; or
  - (b) any of the consent authorities consider on reasonable grounds that it is not appropriate to do so.
- (4) Where 2 or more consent authorities jointly decide applications for a resource consent in accordance with subsection (3), they shall identify in their decision on those applications—
- (a) their respective responsibilities for the administration of any consents granted, including monitoring and enforcement; and
  - (b) the manner in which administrative charges will be allocated between the consent authorities,—
- and any consent shall be issued by the relevant consent authority accordingly.
- (4A) Where 2 or more consent authorities separately decide applications, and all the consent authorities have agreed to grant a resource consent, they shall ensure any conditions to be imposed are not inconsistent with each other.
- (5) In any appeal under section 120 against a joint decision under subsection (4), the respondent shall be the consent authority whose consent is the subject of the appeal.
- (6) This section shall also apply to any other matter the consent authorities are empowered to decide or recommend on under this Act in relation to the same proposal.
- (7) If a consent authority delegates its functions, powers, and duties in relation to a matter to 1 or more hearings commissioners in accordance with section 100A, and a joint hearing under this section includes the matter, then those commissioners must represent the consent authority in the joint hearing in relation to the matter.

Section 102(4A): inserted, on 7 July 1993, by section 52(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 102(6): added, on 7 July 1993, by section 52(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 102(7): added, on 1 October 2009, by section 80 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**103 Combined hearings in respect of 2 or more applications**

- (1) Where 2 or more applications for resource consents in relation to the same proposal have been made to a consent authority, and that consent authority has decided to hear the applications, the consent authority shall hear and decide those applications together unless—
  - (a) the consent authority is of the opinion that the applications are sufficiently unrelated so that it is unnecessary to hear and decide the applications together; and
  - (b) the applicant agrees that a combined hearing need not be held.
- (2) This section shall also apply to any other matter the consent authority is empowered to decide or recommend on under this Act in relation to the same proposal.
- (3) If a consent authority delegates its functions, powers, and duties in relation to a matter to 1 or more hearings commissioners in accordance with section 100A, and the matter is to be heard and decided together with other matters under this section, then all of the matters must be heard and decided by those commissioners.

Section 103(2): added, on 7 July 1993, by section 53 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 103(3): added, on 1 October 2009, by section 81 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**103A Time limit for completion of adjourned hearing**

- (1) Subsection (2) applies to a hearing of an application for a resource consent if—
  - (a) the hearing is adjourned; and
  - (b) the adjournment takes effect after the applicant's right of reply has been exercised.
- (2) The hearing must be concluded no later than 10 working days after the right of reply has been exercised (whether exercised orally or in writing).

Section 103A: inserted, on 1 October 2009, by section 82 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Decisions***104 Consideration of applications**

- (1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2, have regard to—
  - (a) any actual and potential effects on the environment of allowing the activity; and
  - (b) any relevant provisions of—
    - (i) a national environmental standard;
    - (ii) other regulations;
    - (iii) a national policy statement;
    - (iv) a New Zealand coastal policy statement;
    - (v) a regional policy statement or proposed regional policy statement;
    - (vi) a plan or proposed plan; and
  - (c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.
- (2) When forming an opinion for the purposes of subsection (1)(a), a consent authority may disregard an adverse effect of the activity on the environment if a national environmental standard or the plan permits an activity with that effect.
- (2A) When considering an application affected by section 124, the consent authority must have regard to the value of the investment of the existing consent holder.
- (2B) When considering a resource consent application for an activity in an area within the scope of a planning document, a consent authority must have regard to any resource management matters set out in that planning document.
- (2C) Subsection (2B) applies until such time as the regional council, in the case of a consent authority that is a regional council, has completed its obligations in relation to its regional planning documents under section 93 of the Marine and Coastal Area (Takutai Moana) Act 2011.
- (3) A consent authority must not,—
  - (a) when considering an application, have regard to—
    - (i) trade competition or the effects of trade competition; or



- (ii) any effect on a person who has given written approval to the application:
  - (b) *[Repealed]*
  - (c) grant a resource consent contrary to—
    - (i) section 107, 107A, 107E, or 217:
    - (ii) an Order in Council in force under section 152:
    - (iii) any regulations:
    - (iv) wāhi tapu conditions included in a customary marine title order or agreement:
    - (v) section 55(2) of the Marine and Coastal Area (Takutai Moana) Act 2011:
  - (d) grant a resource consent if the application should have been notified and was not.
- (4) A consent authority considering an application must ignore subsection (3)(a)(ii) if the person withdraws the approval in a written notice received by the consent authority before the date of the hearing, if there is one, or, if there is not, before the application is determined.
- (5) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.
- (6) A consent authority may decline an application for a resource consent on the grounds that it has inadequate information to determine the application.
- (7) In making an assessment on the adequacy of the information, the consent authority must have regard to whether any request made of the applicant for further information or reports resulted in further information or any report being available.

Section 104: substituted, on 1 August 2003, by section 44 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 104(1)(b): substituted, on 1 October 2009, by section 83(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 104(2): amended, on 1 October 2009, by section 83(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 104(2A): inserted, on 10 August 2005, by section 59 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 104(2B): inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 104(2C): inserted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 104(3): amended, on 1 October 2009, by section 83(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 104(3)(a): substituted, on 1 October 2009, by section 83(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 104(3)(b): repealed, on 1 October 2009, by section 83(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 104(3)(c): substituted, on 17 January 2005, by section 24 of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 104(3)(c)(i): substituted, on 28 September 2008, by section 6 of the Resource Management Amendment Act 2008 (2008 No 95).

Section 104(3)(c)(iv): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 104(3)(c)(v): added, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 104(3)(d): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 104(4): substituted, on 1 October 2009, by section 83(5) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 104(6): added, on 1 October 2009, by section 83(6) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 104(7): added, on 1 October 2009, by section 83(6) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **104A Determination of applications for controlled activities**

After considering an application for a resource consent for a controlled activity, a consent authority—

- (a) must grant the resource consent, unless it has insufficient information to determine whether or not the activity is a controlled activity; and
- (b) may impose conditions on the consent under section 108 only for those matters—

- (i) over which control is reserved in national environmental standards or other regulations; or
- (ii) over which it has reserved its control in its plan or proposed plan.

Section 104A: inserted, on 1 August 2003, by section 44 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 104A(a): substituted, on 10 August 2005, by section 60 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 104A(b): substituted, on 1 October 2009, by section 84 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **104B Determination of applications for discretionary or non-complying activities**

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

- (a) may grant or refuse the application; and
- (b) if it grants the application, may impose conditions under section 108.

Section 104B: inserted, on 1 August 2003, by section 44 of the Resource Management Amendment Act 2003 (2003 No 23).

#### **104C Determination of applications for restricted discretionary activities**

- (1) When considering an application for a resource consent for a restricted discretionary activity, a consent authority must consider only those matters over which—
  - (a) a discretion is restricted in national environmental standards or other regulations;
  - (b) it has restricted the exercise of its discretion in its plan or proposed plan.
- (2) The consent authority may grant or refuse the application.
- (3) However, if it grants the application, the consent authority may impose conditions under section 108 only for those matters over which—
  - (a) a discretion is restricted in national environmental standards or other regulations;
  - (b) it has restricted the exercise of its discretion in its plan or proposed plan.

Section 104C: substituted, on 1 October 2009, by section 85 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **104D Particular restrictions for non-complying activities**

- (1) Despite any decision made for the purpose of section 95A(2)(a) in relation to adverse effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—
- (a) the adverse effects of the activity on the environment (other than any effect to which section 104(3)(a)(ii) applies) will be minor; or
  - (b) the application is for an activity that will not be contrary to the objectives and policies of—
    - (i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
    - (ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
    - (iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.
- (2) To avoid doubt, section 104(2) applies to the determination of an application for a non-complying activity.

Section 104D: inserted, on 1 August 2003, by section 44 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 104D(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 104D(1)(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### *Decisions on applications relating to discharge of greenhouse gases*

Heading: inserted, on 2 March 2004, by section 7 of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

#### **104E Applications relating to discharge of greenhouse gases**

When considering an application for a discharge permit or coastal permit to do something that would otherwise contra-

vene section 15 or section 15B relating to the discharge into air of greenhouse gases, a consent authority must not have regard to the effects of such a discharge on climate change, except to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases, either—

- (a) in absolute terms; or
- (b) relative to the use and development of non-renewable energy.

Section 104E: inserted, on 2 March 2004, by section 7 of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

#### **104F Implementation of national environmental standards**

If a national environmental standard is made to control the effects on climate change of the discharge into air of greenhouse gases, a consent authority, when considering an application for a discharge permit or coastal permit to do something that would otherwise contravene section 15 or section 15B,—

- (a) may grant the application, with or without conditions, or decline it, as necessary to implement the standard; but
- (b) in making its determination, must be no more or less restrictive than is necessary to implement the standard.

Section 104F: inserted, on 2 March 2004, by section 7 of the Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

Section 104F heading: amended, on 10 August 2005, by section 61(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 104F: amended, on 10 August 2005, by section 61(2)(a) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 104F(a): amended, on 10 August 2005, by section 61(2)(b) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 104F(b): amended, on 10 August 2005, by section 61(2)(b) of the Resource Management Amendment Act 2005 (2005 No 87).

#### **105 Matters relevant to certain applications**

- (1) If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, the consent authority must, in addition to the matters in section 104(1), have regard to—

- (a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
  - (b) the applicant's reasons for the proposed choice; and
  - (c) any possible alternative methods of discharge, including discharge into any other receiving environment.
- (2) If an application is for a resource consent for a reclamation, the consent authority must, in addition to the matters in section 104(1), consider whether an esplanade reserve or esplanade strip is appropriate and, if so, impose a condition under section 108(2)(g) on the resource consent.

Section 105: substituted, on 1 August 2003, by section 44 of the Resource Management Amendment Act 2003 (2003 No 23).

**106 Consent authority may refuse subdivision consent in certain circumstances**

- (1) A consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that—
  - (a) the land in respect of which a consent is sought, or any structure on the land, is or is likely to be subject to material damage by erosion, falling debris, subsidence, slippage, or inundation from any source; or
  - (b) any subsequent use that is likely to be made of the land is likely to accelerate, worsen, or result in material damage to the land, other land, or structure by erosion, falling debris, subsidence, slippage, or inundation from any source; or
  - (c) sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.
- (2) Conditions under subsection (1) must be—
  - (a) for the purposes of avoiding, remedying, or mitigating the effects referred to in subsection (1); and
  - (b) of a type that could be imposed under section 108.

Section 106: substituted, on 1 August 2003, by section 44 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 106(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**107 Restriction on grant of certain discharge permits**

- (1) Except as provided in subsection (2), a consent authority shall not grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A allowing—
- (a) the discharge of a contaminant or water into water; or
  - (b) a discharge of a contaminant onto or into land in circumstances which may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; or
  - (ba) the dumping in the coastal marine area from any ship, aircraft, or offshore installation of any waste or other matter that is a contaminant,—
- if, after reasonable mixing, the contaminant or water discharged (either by itself or in combination with the same, similar, or other contaminants or water), is likely to give rise to all or any of the following effects in the receiving waters:
- (c) the production of any conspicuous oil or grease films, scums or foams, or floatable or suspended materials:
  - (d) any conspicuous change in the colour or visual clarity:
  - (e) any emission of objectionable odour:
  - (f) the rendering of fresh water unsuitable for consumption by farm animals:
  - (g) any significant adverse effects on aquatic life.
- (2) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or section 15A that may allow any of the effects described in subsection (1) if it is satisfied—
- (a) that exceptional circumstances justify the granting of the permit; or
  - (b) that the discharge is of a temporary nature; or
  - (c) that the discharge is associated with necessary maintenance work—
- and that it is consistent with the purpose of this Act to do so.
- (3) In addition to any other conditions imposed under this Act, a discharge permit or coastal permit may include conditions requiring the holder of the permit to undertake such works in such stages throughout the term of the permit as will ensure

that upon the expiry of the permit the holder can meet the requirements of subsection (1) and of any relevant regional rules.

Section 107(1): amended, on 20 August 1998, by section 14(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 107(1): amended, on 7 July 1993, by section 57(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 107(1)(b): substituted, on 20 August 1998, by section 14(1) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 107(1)(ba): inserted, on 20 August 1998, by section 14(1) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 107(2): substituted, on 17 December 1997, by section 23(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 107(2): amended, on 20 August 1998, by section 14(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 107(3): substituted, on 7 July 1993, by section 57(4) of the Resource Management Amendment Act 1993 (1993 No 65).

#### **107A Restrictions on grant of resource consents**

*[Repealed]*

Section 107A: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

#### **107B Provision for certain infrastructure works and related operations**

*[Repealed]*

Section 107B: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

#### **107C Circumstances when written approval for resource consent required from holder of customary rights order**

*[Repealed]*

Section 107C: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

#### **107D Process to apply if grant of resource consent has effect of cancelling customary rights order**

*[Repealed]*

Section 107D: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).



*Decisions on applications relating to  
non-aquaculture activities*

Heading: inserted, on 28 September 2008, by section 7 of the Resource Management Amendment Act 2008 (2008 No 95).

**107E Decision on application to undertake non-aquaculture activity in aquaculture management area**

- (1) This section applies when a person applies for a coastal permit to undertake an activity in an aquaculture management area and the activity is not an aquaculture activity.
- (2) The consent authority may grant the permit only to the extent to which the activity is compatible with the aquaculture activities that may be undertaken in the aquaculture management area.

Section 107E: inserted, on 28 September 2008, by section 7 of the Resource Management Amendment Act 2008 (2008 No 95).

**108 Conditions of resource consents**

- (1) Except as expressly provided in this section and subject to any regulations, a resource consent may be granted on any condition that the consent authority considers appropriate, including any condition of a kind referred to in subsection (2).
- (2) A resource consent may include any 1 or more of the following conditions:
  - (a) subject to subsection (10), a condition requiring that a financial contribution be made:
  - (b) a condition requiring provision of a bond (and describing the terms of that bond) in accordance with section 108A:
  - (c) a condition requiring that services or works, including (but without limitation) the protection, planting, or re-planting of any tree or other vegetation or the protection, restoration, or enhancement of any natural or physical resource, be provided:
  - (d) in respect of any resource consent (other than a subdivision consent), a condition requiring that a covenant be entered into, in favour of the consent authority, in respect of the performance of any condition of the re-

- source consent (being a condition which relates to the use of land to which the consent relates):
- (e) subject to subsection (8), in respect of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or section 15B, a condition requiring the holder to adopt the best practicable option to prevent or minimise any actual or likely adverse effect on the environment of the discharge and other discharges (if any) made by the person from the same site or source:
  - (f) in respect of a subdivision consent, any condition described in section 220 (notwithstanding any limitation on the imposition of conditions provided for by section 87A(2)(b) or (3)(a)):
  - (g) in respect of any resource consent for reclamation granted by the relevant consent authority, a condition requiring an esplanade reserve or esplanade strip of any specified width to be set aside or created under Part 10:
  - (h) in respect of any coastal permit to occupy any part of the common marine and coastal area, a condition—
    - (i) detailing the extent of the exclusion of other persons:
    - (ii) specifying any coastal occupation charge.
- (3) A consent authority may include as a condition of a resource consent a requirement that the holder of a resource consent supply to the consent authority information relating to the exercise of the resource consent.
- (4) Without limiting subsection (3), a condition made under that subsection may require the holder of the resource consent to do 1 or more of the following:
- (a) to make and record measurements:
  - (b) to take and supply samples:
  - (c) to carry out analyses, surveys, investigations, inspections, or other specified tests:
  - (d) to carry out measurements, samples, analyses, surveys, investigations, inspections, or other specified tests in a specified manner:
  - (e) to provide information to the consent authority at a specified time or times:

- (f) to provide information to the consent authority in a specified manner;
  - (g) to comply with the condition at the holder of the resource consent's expense.
- (5) Any conditions of a kind referred to in subsection (3) that were made before the commencement of this subsection, and any action taken or decision made as a result of such a condition, are hereby declared to be, and to have always been, as valid as they would have been if subsections (3) and (4) had been included in this Act when the conditions were made, or the action was taken, or the decision was made.
- (6) *[Repealed]*
- (7) Any condition under subsection (2)(d) may, among other things, provide that the covenant may be varied or cancelled or renewed at any time by agreement between the consent holder and the consent authority.
- (8) Before deciding to grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or 15B subject to a condition described in subsection (2)(e), the consent authority shall be satisfied that, in the particular circumstances and having regard to—
  - (a) the nature of the discharge and the receiving environment; and
  - (b) other alternatives, including any condition requiring the observance of minimum standards of quality of the receiving environment—the inclusion of that condition is the most efficient and effective means of preventing or minimising any actual or likely adverse effect on the environment.
- (9) In this section, **financial contribution** means a contribution of—
  - (a) money; or
  - (b) land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Maori land within the meaning of Te Ture Whenua Maori Act 1993 unless that Act provides otherwise; or
  - (c) a combination of money and land.

- (10) A consent authority must not include a condition in a resource consent requiring a financial contribution unless—
- (a) the condition is imposed in accordance with the purposes specified in the plan or proposed plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and
  - (b) the level of contribution is determined in the manner described in the plan or proposed plan.

Section 108(1): substituted, on 17 December 1997, by section 24(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 108(2): substituted, on 17 December 1997, by section 24(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 108(2)(b): substituted, on 1 August 2003, by section 45(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 108(2)(f): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 108(2)(h): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 108(3): substituted, on 7 July 1993, by section 58(6) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 108(4): substituted, on 7 July 1993, by section 58(6) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 108(5): substituted, on 7 July 1993, by section 58(6) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 108(6): repealed, on 1 August 2003, by section 45(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 108(7): amended, on 17 December 1997, by section 24(3) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 108(8): amended, on 20 August 1998, by section 24(4)(a) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 108(8): amended, on 17 December 1997, by section 24(4)(b) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 108(9): substituted, on 17 December 1997, by section 24(5) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 108(10): added, on 17 December 1997, by section 24(5) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 108(10)(a): amended, on 1 August 2003, by section 45(4) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 108(10)(b): amended, on 1 August 2003, by section 45(5) of the Resource Management Amendment Act 2003 (2003 No 23).

### **108A Bonds**

- (1) A bond required under section 108(2)(b) may be given for the performance of any 1 or more conditions the consent authority considers appropriate and may continue after the expiry of the resource consent to secure the ongoing performance of conditions relating to long-term effects, including—
  - (a) a condition relating to the alteration or removal of structures:
  - (b) a condition relating to remedial, restoration, or maintenance work:
  - (c) a condition providing for ongoing monitoring of long-term effects.
- (2) A condition describing the terms of the bond to be entered into under section 108(2)(b) may—
  - (a) require that the bond be given before the resource consent is exercised or at any other time:
  - (b) require that section 109(1) apply to the bond:
  - (c) provide that the liability of the holder of the resource consent be not limited to the amount of the bond:
  - (d) require the bond to be given to secure performance of conditions of the consent including conditions relating to any adverse effects on the environment that become apparent during or after the expiry of the consent:
  - (e) require the holder of the resource consent to provide such security as the consent authority thinks fit for the performance of any condition of the bond:
  - (f) require the holder of the resource consent to provide a guarantor (acceptable to the consent authority) to bind itself to pay for the carrying out of a condition in the event of a default by the holder or the occurrence of an adverse environmental effect requiring remedy:
  - (g) provide that the bond may be varied or cancelled or renewed at any time by agreement between the holder and the consent authority.
- (3) If a consent authority considers that an adverse effect may continue or arise at any time after the expiration of a resource consent granted by it, the consent authority may require that a bond continue for a specified period that the consent authority thinks fit.

Section 108A: inserted, on 1 August 2003, by section 46 of the Resource Management Amendment Act 2003 (2003 No 23).

**109 Special provisions in respect of bonds or covenants**

- (1) Every bond given under section 108A in respect of a land use consent or subdivision consent, and any other bond to which this subsection is applied as a condition of the consent, and every covenant given under section 108(2)(d),—
  - (a) shall be deemed to be an instrument creating an interest in the land within the meaning of section 62 of the Land Transfer Act 1952, and may be registered accordingly; and
  - (b) when registered under the Land Transfer Act 1952, shall be a covenant running with the land and shall, notwithstanding anything to the contrary in section 105 of the Land Transfer Act 1952, bind all subsequent owners of the land.
- (2) Where any such bond or covenant has been registered under the Land Transfer Act 1952 and that bond or covenant is varied, cancelled, or expires, the Registrar-General of Land shall make an appropriate entry in the register and on any relevant instrument of title noting that the bond or covenant has been varied or cancelled or has expired, and the bond or covenant shall take effect as so varied or cease to have any effect, as the case may be.
- (3) Where any bond has been given in respect of the completion of any work, or for the purposes of ascertaining whether the work has been completed to the satisfaction of the consent authority, the consent authority may from time to time, under section 171 of the Local Government Act 2002, enter on the land where the work is required to be, or is being, or has been, carried out.
- (4) Where the holder fails, within the period prescribed by the resource consent (or within such further period as the consent authority may allow), to complete, to the satisfaction of the consent authority, any work in respect of which any bond is given (including completion of any interim monitoring required)—
  - (a) the consent authority may enter on the land and complete the work and recover the cost thereof from the holder out of any money or securities deposited with

- the consent authority or money paid by a guarantor, so far as the money or securities will extend; and
- (b) on completion of the work to the satisfaction of the consent authority, any money or securities remaining in the hands of the consent authority after payment of the cost of the works shall be returned to the holder or the guarantor, as the case may be.
- (5) Where the cost of any work done by the consent authority under subsection (4) exceeds the amount recovered by the consent authority under that subsection, the amount of that excess shall be a debt due to the consent authority by the holder, and shall thereupon be a charge on the land.
- (6) The provisions of Part 12 shall continue to apply notwithstanding the entry into or subsequent variation or cancellation of any such bond or covenant.

Section 109(1): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 109(1): amended, on 17 December 1997, by section 25(b) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 109(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 109(3): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 109(4): amended, on 1 August 2003, by section 47 of the Resource Management Amendment Act 2003 (2003 No 23).

## **110 Refund of money and return of land where activity does not proceed**

- (1) Subject to subsection (2), where—
- (a) a resource consent includes a condition under section 108(2)(a); and
- (b) that resource consent lapses under section 125 or is cancelled under section 126 or is surrendered under section 138; and
- (c) the activity in respect of which the resource consent was granted does not proceed,—
- the consent authority shall refund or return to the consent holder, or his or her personal representative, any financial contribution paid or land set aside under section 108(2)(a).

- (2) A consent authority may retain any portion of a financial contribution or land referred to in subsection (1) of a value equivalent to the costs incurred by the consent authority in relation to the activity and its discontinuance.

Section 110(1): amended, on 17 December 1997, by section 26 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 110(1): amended, on 7 July 1993, by section 59 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 110(1)(a): amended, on 17 December 1997, by section 26 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 110(1)(a): amended, on 7 July 1993, by section 59 of the Resource Management Amendment Act 1993 (1993 No 65).

#### 111 Use of financial contributions

Where a consent authority has received a cash contribution under section 108(2)(a), the authority shall deal with that money in reasonable accordance with the purposes for which the money was received.

Section 111: amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 111: amended, on 17 December 1997, by section 27 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 111: amended, on 7 July 1993, by section 60 of the Resource Management Amendment Act 1993 (1993 No 65).

#### 112 Obligation to pay rent and royalties deemed condition of consent

- (1) In every coastal permit authorising the holder to—

(a) *[Repealed]*

(b) remove any sand, shingle, shell, or other natural material, within the meaning of section 12(4), from any such land—

there shall be implied a condition that the holder shall at all times throughout the period of the permit pay to the relevant regional council, on behalf of the Crown,—

(c) where the permit was permitted to be granted by virtue of an authorisation granted under section 161, the rent and royalties (if any) specified in the authorisation held by the permit holder; and

(d) any sum of money required to be paid by any regulation made under section 360(1)(c).



- (2) In every water permit granted to do something that would otherwise contravene section 14(2)(c) (relating to the taking or use of geothermal energy) there shall be implied a condition that the holder shall at all times throughout the period of the permit pay to the relevant regional council, on behalf of the Crown, any sum of money required to be paid by any regulation made under section 360(1)(c).
- (3) Where an activity specified in subsection (1) or subsection (2) is a permitted activity in a plan, there shall be implied as a condition in the plan that the person undertaking the activity shall at all times throughout the period during which the activity is undertaken pay to the relevant regional council, on behalf of the Crown, any sum of money required to be paid by regulations made under section 360(1)(c).

Section 112 heading: amended, on 17 December 1997, by section 28 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 112(1)(a): repealed, on 17 December 1997, by section 28 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 112(1)(b): amended, on 7 July 1993, by section 61(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 112(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 112(3): added, on 7 July 1993, by section 61(2) of the Resource Management Amendment Act 1993 (1993 No 65).

### **113 Decisions on applications to be in writing, etc**

- (1) Every decision on an application for a resource consent that is notified shall be in writing and state—
  - (a) the reasons for the decision; and
  - (aa) the relevant statutory provisions that were considered by the consent authority; and
  - (ab) any relevant provisions of the following that were considered by the consent authority:
    - (i) a national environmental standard:
    - (ia) a national policy statement:
    - (ii) a New Zealand coastal policy statement:
    - (iii) a regional policy statement:
    - (iv) a proposed regional policy statement:
    - (v) a plan:

- (vi) a proposed plan; and
  - (ac) the principal issues that were in contention; and
  - (ad) a summary of the evidence heard; and
  - (ae) the main findings on the principal issues that were in contention; and
  - (b) in a case where a resource consent is granted for a shorter duration than specified in the application, the reasons for deciding on the shorter duration.
- (2) Without limiting subsection (1), in a case where a resource consent is granted which, when exercised, is likely to allow any of the effects described in section 107(1)(c) to (g), the consent authority shall include in its decision the reasons for granting the consent.
- (3) A decision prepared under subsection (1) may,—
  - (a) instead of repeating material, cross-refer to all or a part of—
    - (i) the assessment of environmental effects provided by the applicant concerned;
    - (ii) any report prepared under section 41C, 42A, or 92; or
  - (b) adopt all or a part of the assessment or report, and cross-refer to the material accordingly.
- (4) Every decision on an application for a resource consent that is not notified must be in writing and state the reasons for the decision.

Section 113(1): amended, on 1 October 2009, by section 86(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 113(1)(aa): inserted, on 10 August 2005, by section 62 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 113(1)(ab): inserted, on 10 August 2005, by section 62 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 113(1)(ab)(i): substituted, on 1 October 2009, by section 86(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 113(1)(ab)(ia): inserted, on 1 October 2009, by section 86(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 113(1)(ac): inserted, on 10 August 2005, by section 62 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 113(1)(ad): inserted, on 10 August 2005, by section 62 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 113(1)(ae): inserted, on 10 August 2005, by section 62 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 113(1)(ae): amended, on 1 October 2009, by section 86(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 113(2): added, on 7 July 1993, by section 62 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 113(3): added, on 1 October 2009, by section 86(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 113(4): added, on 1 October 2009, by section 86(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **114 Notification**

- (1) A consent authority must ensure that a copy of a decision on an application for a resource consent and a statement of the time within which an appeal against the decision may be lodged is served on the applicant.
- (2) A consent authority must ensure that a notice of decision on an application for a resource consent and a statement of the time within which an appeal against the decision may be lodged is served on—
  - (a) persons who made a submission; and
  - (b) other persons and authorities that it considers appropriate.
- (3) If the consent authority serves a notice summarising a decision, it must—
  - (a) make a copy of the decision available (whether physically or by electronic means) at all its offices and all public libraries in the district (if the consent authority is a territorial authority) or region (in all other cases); and
  - (b) include with the notice a statement of the places where a copy of the decision is available; and
  - (c) send or provide, on request, a copy of the decision within 3 working days after the request is received.

Section 114: substituted, on 1 August 2003, by section 48 of the Resource Management Amendment Act 2003 (2003 No 23).

**115 Time limits for notification of decision**

- (1) Notice of a decision on an application for a resource consent must be given under section 114 within the time limits in this section.
- (2) If a hearing is held, notice of the decision must be given within 15 working days after the end of the hearing.
- (3) If the application was not notified and a hearing is not held, notice of the decision must be given within 20 working days after the date the application was first lodged with the authority.
- (4) If the application was notified and a hearing is not held, notice of the decision must be given within 20 working days after the closing date for submissions on the application.
- (5) However, if section 87I applies and a hearing is not held, the notice must be given within 10 working days after the date on which the authority knows that the section applies.

Section 115: substituted, on 1 October 2009, by section 87 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**116 When a resource consent commences**

- (1) Except as provided in subsections (1A), (2), (4), and (5), every resource consent that has been granted commences—
  - (a) when the time for lodging appeals against the grant of the consent expires and no appeals have been lodged; or
  - (b) when the Environment Court determines the appeals or all appellants withdraw their appeals—unless the resource consent states a later date or a determination of the Environment Court states otherwise.
- (1A) A resource consent that has been granted—
  - (a) for a non-notified application; or
  - (b) for a notified application where the time for lodging submissions has expired and either—
    - (i) no submissions are received; or
    - (ii) all submissions received are withdrawn before a decision is made—commences on the date on which the decision on the application is notified under section 114 or on such later date as is stated in the resource consent, unless an appeal has been lodged, in which case subsection (1) applies, or an objection

has been made under section 357A, in which case subsection (1AB) applies.

- (1AB) If an objection has been made under section 357A, the resource consent commences when the objection, and any appeal under section 358, has been decided or withdrawn.
- (2) A resource consent to which section 89(2) applies shall not commence—
- (a) in the case of a subdivision consent, until the date the land to which the consent relates is vested in the consent holder under section 355(3); and
  - (b) in every other case, until the proposed location of the activity has been reclaimed and a certificate has been issued under section 245(5) in respect of the reclamation.
- (3) *[Repealed]*
- (4) Where the Environment Court grants a resource consent under section 87G or 149U, the consent commences on the date of the decision or such later date as the court states in its decision.
- (5) Where a board of inquiry grants a resource consent under section 149R, the consent commences on the date of the decision or such later date as the board states in its decision.
- (6) If a resource consent is granted for an activity in a part of the common marine and coastal area where a customary marine title order or agreement is in effect, section 68(1) of the Marine and Coastal Area (Takutai Moana) Act 2011 applies.

Section 116(1): amended, on 1 October 2009, by section 88(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 116(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 116(1): amended, on 7 July 1993, by section 64(1)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 116(1): amended, on 7 July 1993, by section 64(1)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 116(1)(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 116(1A): inserted, on 7 July 1993, by section 64(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 116(1A): amended, on 1 October 2009, by section 88(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 116(1A): amended, on 10 August 2005, by section 63 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 116(1A): amended, on 1 August 2003, by section 50(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 116(1AB): inserted, on 1 August 2003, by section 50(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 116(1AB): amended, on 10 August 2005, by section 63 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 116(3): repealed, on 1 October 2009, by section 88(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 116(4): added, on 1 October 2009, by section 88(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 116(5): added, on 1 October 2009, by section 88(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 116(6): added, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

### *Restricted coastal activities*

#### **117 Application to carry out restricted coastal activity**

- (1) An application for a coastal permit to carry out an activity that a regional coastal plan describes as a restricted coastal activity must be made to the regional council for the region concerned, except if the application is made to the EPA under section 145.
- (2) The regional council is the consent authority in relation to the application for the coastal permit.
- (3) Any provisions of this Act that apply in relation to an application for a resource consent apply in relation to the application for the coastal permit, except as provided in this section.
- (4) The consent authority must, after receiving the application, promptly provide a copy of it to the Minister of Conservation and the relevant territorial authority.
- (5) The consent authority must publicly notify the application.
- (6) Section 100A does not apply in relation to the application for the coastal permit.
- (7) The consent authority must delegate, under section 34A, its functions, powers, and duties required to hear and decide the

application to 1 or more persons permitted by section 34A(1), including 1 person nominated by the Minister of Conservation.

- (8) The consent authority must ensure that a notice of its decision on the application is served on the Minister of Conservation under section 114.

Section 117: substituted, on 1 October 2009, by section 89 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **118 Recommendation of hearing committee**

*[Repealed]*

Section 118: repealed, on 1 October 2009, by section 90 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **119 Decision on application for restricted coastal activity**

*[Repealed]*

Section 119: repealed, on 1 October 2009, by section 90 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **119A Coastal permit for restricted coastal activity treated as if granted by regional council**

- (1) Subsection (3) applies to a coastal permit for a restricted coastal activity granted at any time by the Minister of Conservation for a coastal marine area within the region of a regional council.
- (2) If subsection (3) applies to a coastal permit, it applies on and from the later of—
- (a) 1 October 2009; or
  - (b) the date that the coastal permit is granted.
- (3) The coastal permit is to be treated as if—
- (a) it were granted by the regional council; and
  - (b) the regional council were the consent authority in relation to the coastal permit on and from the date it was granted.

Section 119A: substituted, on 1 October 2009, by section 91 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Appeals***120 Right to appeal**

- (1) Any 1 or more of the following persons may appeal to the Environment Court in accordance with section 121 against the whole or any part of a decision of a consent authority on an application for a resource consent, or an application for a change of consent conditions, or on a review of consent conditions:
- (a) the applicant or consent holder;
  - (b) any person who made a submission on the application or review of consent conditions;
  - (c) in relation to a coastal permit for a restricted coastal activity, the Minister of Conservation.
- (2) This section is in addition to the rights provided for in sections 357A, 357C, and 357D (which provide for objections to the consent authority).

Section 120(1): amended, on 1 October 2009, by section 92(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 120(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 120(1)(c): added, on 1 October 2009, by section 92(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 120(2): added, on 7 July 1993, by section 68(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 120(2): amended, on 10 August 2005, by section 65 of the Resource Management Amendment Act 2005 (2005 No 87).

**121 Procedure for appeal**

- (1) Notice of an appeal under section 120 shall be in the prescribed form and shall—
- (a) state the reasons for the appeal and the relief sought; and
  - (b) state any matters required by regulations; and
  - (c) be lodged with the Environment Court and served on the consent authority whose decision is appealed within 15 working days of notice of the decision being received in accordance with this Act.
- (2) The appellant shall ensure that a copy of the notice of appeal is served on every person referred to in section 120 (other than



the appellant) within 5 working days of the notice being lodged with the Environment Court.

(3) *[Repealed]*

Section 121(1)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 121(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 121(3): repealed, on 1 October 2009, by section 93 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Nature of resource consent*

**122 Consents not real or personal property**

- (1) A resource consent is neither real nor personal property.
- (2) Except as expressly provided otherwise in the conditions of a consent,—
  - (a) on the death of the holder of a consent, the consent vests in the personal representative of the holder as if the consent were personal property, and he or she may deal with the consent to the same extent as the holder would have been able to do; and
  - (b) on the bankruptcy of an individual who is the holder of a consent, the consent vests in the Official Assignee as if it were personal property, and he or she may deal with the consent to the same extent as the holder would have been able to do; and
  - (c) a consent shall be treated as property for the purposes of the Protection of Personal and Property Rights Act 1988.
- (3) The holder of a resource consent may grant a charge over that consent as if it were personal property, but the consent may only be transferred to the chargee, or by or on behalf of the chargee, to the same extent as it could be so transferred by the holder.
- (4) Subject to the provisions of this Act, and in particular to subsection (3), the Personal Property Securities Act 1999 applies in relation to a resource consent as if—
  - (a) the resource consent were goods within the meaning of that Act; and

- (b) the resource consent were situated in the provincial district in which the activity permitted by the consent may be carried out (or, where it may be carried out in more than 1 provincial district, in those provincial districts).
- (5) Except to the extent—
  - (a) that the coastal permit expressly provides otherwise; and
  - (b) that is reasonably necessary to achieve the purpose of the coastal permit,—  
no coastal permit shall be regarded as—
    - (c) an authority for the holder to occupy a coastal marine area to the exclusion of all or any class of persons; or
    - (d) conferring on the holder the same rights in relation to the use and occupation of the area against those persons as if he or she were a tenant or licensee of the land.
- (6) Except to the extent—
  - (a) that the consent expressly provides otherwise; and
  - (b) that is reasonably necessary to achieve the purpose of the consent,—  
no coastal permit shall be regarded as an authority for the holder to remove sand, shingle, shell, or other natural material as if it were a licence or profit à prendre.

Section 122(4): substituted, on 1 May 2002, by section 191(1) of the Personal Property Securities Act 1999 (1999 No 126).

Section 122(5)(c): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 122(6): amended, on 7 July 1993, by section 70 of the Resource Management Amendment Act 1993 (1993 No 65).

### *Duration of consent*

#### **123 Duration of consent**

Except as provided in section 125,—

- (a) the period for which a coastal permit for a reclamation, or a land use consent in respect of a reclamation that would otherwise contravene section 13, is granted is unlimited, unless otherwise specified in the consent:
- (b) subject to paragraph (c), the period for which any other land use consent, or a subdivision consent, is granted is unlimited, unless otherwise specified in the consent:

- (c) the period for which any other coastal permit, or any other land use consent to do something that would otherwise contravene section 13, is granted is such period, not exceeding 35 years, as is specified in the consent and if no such period is specified, is 5 years from the date of commencement of the consent under section 116;
- (d) the period for which any other resource consent is granted is the period (not exceeding 35 years from the date of granting) specified in the consent and, if no such period is specified, is 5 years from the date of commencement of the consent under section 116.

**124 Exercise of resource consent while applying for new consent**

- (1) Subsection (3) applies when—
  - (a) a resource consent is due to expire; and
  - (b) the holder of the consent applies for a new consent for the same activity; and
  - (c) the application is made to the appropriate consent authority; and
  - (d) the application is made at least 6 months before the expiry of the existing consent.
- (2) Subsection (3) also applies when—
  - (a) a resource consent is due to expire; and
  - (b) the holder of the consent applies for a new consent for the same activity; and
  - (c) the application is made to the appropriate consent authority; and
  - (d) the application is made in the period that—
    - (i) begins 6 months before the expiry of the existing consent; and
    - (ii) ends 3 months before the expiry of the existing consent; and
  - (e) the authority, in its discretion, allows the holder to continue to operate.
- (3) The holder may continue to operate under the existing consent until—
  - (a) a new consent is granted and all appeals are determined; or

- (b) a new consent is declined and all appeals are determined.

Section 124: substituted, on 10 August 2005, by section 66 of the Resource Management Amendment Act 2005 (2005 No 87).

**124A When sections 124B and 124C apply and when they do not apply**

- (1) Sections 124B and 124C apply to an application affected by section 124 if, when the application is made, the relevant plan has not allocated any of the natural resources used for the activity.
- (2) Sections 124B and 124C also apply to an application affected by section 124 as follows:
  - (a) they apply if, when the application is made,—
    - (i) the relevant plan has allocated some or all of the natural resources used for the activity to the same type of activity; and
    - (ii) the relevant plan does not expressly say that sections 124A to 124C do not apply; and
  - (b) they apply to the extent to which the amount of the resource sought by a person described in section 124B(1)(a) and (b) is equal to or smaller than the amount of the resource that—
    - (i) is allocated to the same type of activity; and
    - (ii) is left after the deduction of every amount allocated to every other existing resource consent.
- (3) Sections 124B and 124C do not apply to an application affected by section 124 if, when the application is made, the relevant plan expressly says that sections 124A to 124C do not apply.

Section 124A: inserted, on 9 August 2008, by section 67 of the Resource Management Amendment Act 2005 (2005 No 87).

**124B Applications by existing holders of resource consents**

- (1) This section applies when—
  - (a) a person holds an existing resource consent to undertake an activity under any of sections 12, 13, 14, and 15 using a natural resource; and

- (b) the person makes an application affected by section 124; and
  - (c) the consent authority receives 1 or more other applications for a resource consent that—
    - (i) are to undertake an activity using some or all of the natural resource to which the existing consent relates; and
    - (ii) could not be fully exercised until the expiry of the existing consent.
- (2) The application described in subsection (1)(b) is entitled to priority over every application described in subsection (1)(c).
- (3) The consent authority must determine the application described in subsection (1)(b) before it determines any application described in subsection (1)(c).
- (4) The consent authority must determine an application described in subsection (1)(b) by applying all the relevant provisions of this Act and the following criteria:
  - (a) the efficiency of the person's use of the resource; and
  - (b) the use of industry good practice by the person; and
  - (c) if the person has been served with an enforcement order not later cancelled under section 321, or has been convicted of an offence under section 338,—
    - (i) how many enforcement orders were served or convictions entered; and
    - (ii) how serious the enforcement orders or convictions were; and
    - (iii) how recently the enforcement orders were served or the convictions entered.

Section 124B: inserted, on 9 August 2008, by section 67 of the Resource Management Amendment Act 2005 (2005 No 87).

#### **124C Applications by persons who are not existing holders of resource consents**

- (1) This section applies when—
  - (a) a person makes an application for a resource consent to undertake an activity under any of sections 12, 13, 14, and 15 using a natural resource; and

- (b) the person does not hold an existing consent for the same activity using some or all of the same natural resource; and
  - (c) a consent granted as a result of the application could not be fully exercised until the expiry of the consent described in section 124B(1)(a); and
  - (d) the person makes the application more than 3 months before the expiry of the consent described in section 124B(1)(a).
- (2) The consent authority must—
  - (a) hold the application without processing it; and
  - (b) notify the holder of the existing consent—
    - (i) that the application has been received; and
    - (ii) that the holder may make an application affected by section 124.
- (3) If the holder of the existing consent notifies the consent authority in writing that the holder does not propose to make an application affected by section 124, the consent authority must process and determine the application described in subsection (1)(a).
- (4) If the holder of the existing consent does not make an application affected by section 124 more than 3 months before the expiry of the consent, the consent authority must process and determine the application described in subsection (1)(a).
- (5) If the holder of the existing consent makes an application affected by section 124 more than 3 months before the expiry of the consent, the consent authority must hold the application described in subsection (1)(a) until the determination of the holder's application and any appeal.
- (6) If the result of the determination of the holder's application and any appeal is that the holder's application affected by section 124 is granted, the application described in subsection (1)(a) lapses to the extent to which the use of the resource has been granted to the holder.

Section 124C: inserted, on 9 August 2008, by section 67 of the Resource Management Amendment Act 2005 (2005 No 87).

## **125 Lapsing of consents**

- (1) A resource consent lapses on the date specified in the consent or, if no date is specified, 5 years after the date of commencement of the consent unless, before the consent lapses,—
- (a) the consent is given effect to; or
  - (b) an application is made to the consent authority to extend the period after which the consent lapses, and the consent authority decides to grant an extension after taking into account—
    - (i) whether substantial progress or effort has been, and continues to be, made towards giving effect to the consent; and
    - (ii) whether the applicant has obtained approval from persons who may be adversely affected by the granting of an extension; and
    - (iii) the effect of the extension on the policies and objectives of any plan or proposed plan.
- (1A) Sections 357A and 357C to 358 apply to subsection (1)(b).
- (2) For the purposes of this section, a subdivision consent is given effect to when a survey plan in respect of the subdivision has been submitted to the territorial authority under section 223, but shall thereafter lapse if the survey plan is not deposited in accordance with section 224.
- (3) This section is subject to section 150G.

Section 125 heading: amended, on 7 July 1993, by section 71 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 125(1): substituted, on 1 August 2003, by section 51 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 125(1A): inserted, on 1 August 2003, by section 51 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 125(1A): amended, on 10 August 2005, by section 68 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 125(2): added, on 7 July 1993, by section 71 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 125(3): added, on 19 March 2004, by section 4 of the Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004 (2004 No 5).

## **126 Cancellation of consent**

- (1) A consent authority may cancel a resource consent by written notice served on the consent holder if the resource consent has

been exercised in the past but has not been exercised during the preceding 5 years.

- (2) Subsection (1) does not apply if—
- (a) the resource consent expressly provides otherwise; or
  - (b) within 3 months after service of the notice, an application is made to the consent authority to revoke the notice and the consent authority decides to revoke the notice and state a period after which a new notice may be served under subsection (1), after taking into account—
    - (i) whether the applicant has obtained approval from persons who may be adversely affected by the revocation of the notice; and
    - (ii) the effect of the revocation of the notice on the policies and objectives of any plan or proposed plan.
- (3) Sections 357A and 357C to 358 apply to this section.

Section 126: substituted, on 1 August 2003, by section 52 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 126(3): amended, on 10 August 2005, by section 69 of the Resource Management Amendment Act 2005 (2005 No 87).

## **127 Change or cancellation of consent condition on application by consent holder**

- (1) The holder of a resource consent may apply to a consent authority for a change or cancellation of a condition of the consent, subject to the following:
- (a) the holder of a subdivision consent must apply under this section for a change or cancellation of the consent before the deposit of the survey plan (and must apply under section 221 for a variation or cancellation of a consent notice after the deposit of the survey plan); and
  - (b) no holder of any consent may apply for a change or cancellation of a condition on the duration of the consent.
- (2) *[Repealed]*
- (3) Sections 88 to 121 apply, with all necessary modifications, as if—
- (a) the application were an application for a resource consent for a discretionary activity; and



- (b) the references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.
- (4) For the purposes of determining who is adversely affected by the change or cancellation, the consent authority must consider, in particular, every person who—
  - (a) made a submission on the original application; and
  - (b) may be affected by the change or cancellation.

Section 127(1): substituted, on 10 August 2005, by section 70 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 127(2): repealed, on 10 August 2005, by section 70 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 127(3): substituted, on 1 August 2003, by section 53(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 127(4): substituted, on 1 August 2003, by section 53(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 127(4): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### *Review of consent conditions by consent authority*

#### **128 Circumstances when consent conditions can be reviewed**

- (1) A consent authority may, in accordance with section 129, serve notice on a consent holder of its intention to review the conditions of a resource consent—
  - (a) at any time or times specified for that purpose in the consent for any of the following purposes:
    - (i) to deal with any adverse effect on the environment which may arise from the exercise of the consent and which it is appropriate to deal with at a later stage; or
    - (ii) to require a holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15B to adopt the best practicable option to remove or reduce any adverse effect on the environment; or
    - (iii) for any other purpose specified in the consent; or

- (b) in the case of a coastal, water, or discharge permit, when a regional plan has been made operative which sets rules relating to maximum or minimum levels or flows or rates of use of water, or minimum standards of water quality or air quality, or ranges of temperature or pressure of geothermal water, and in the regional council's opinion it is appropriate to review the conditions of the permit in order to enable the levels, flows, rates, or standards set by the rule to be met; or
  - (ba) in the case of a coastal, water, or discharge permit, when relevant national environmental standards have been made; or
  - (c) if the information made available to the consent authority by the applicant for the consent for the purposes of the application contained inaccuracies which materially influenced the decision made on the application and the effects of the exercise of the consent are such that it is necessary to apply more appropriate conditions.
- (2) A consent authority must, in accordance with section 129, serve notice on a consent holder of its intention to review the conditions of a resource consent if required by an order made under section 339(5)(b).

Section 128(1)(a): amended, on 7 July 1993, by section 73(1)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 128(1)(a)(ii): amended, on 20 August 1998, by section 30 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 128(1)(a)(ii): amended, on 7 July 1993, by section 73(1)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 128(1)(b): substituted, on 7 July 1993, by section 73(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 128(1)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 128(1)(ba): inserted, on 1 August 2003, by section 54 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 128(1)(ba): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 128(1)(ba): amended, on 10 August 2005, by section 71(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 128(2): substituted, on 1 October 2009, by section 94 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**129 Notice of review**

- (1) A notice under section 128—
- (a) shall advise the consent holder of the conditions of the consent which are the subject of the review; and
  - (b) shall state the reasons for the review; and
  - (c) shall specify the information which the consent authority took into account in making its decision to review the consent, unless the notice is given under section 128(1)(a) or (ba) or (2); and
  - (d) may propose, and invite the consent holder to propose within 20 working days of service of the notice, new consent conditions; and
  - (e) must advise a consent holder by whom a charge is payable under section 36(1)(cb)—
    - (i) of the fact that the charge is payable; and
    - (ii) of the estimated amount of the charge.
- (2) If notification of the review is required under section 130, the notification must include a summary of the notice served under section 128, and must be served within—
- (a) 30 working days after the service of the notice (if the consent holder is invited to propose new conditions); or
  - (b) 10 working days after the service of the notice (if the consent holder is not invited to propose new conditions).

Section 129(1)(c): amended, on 1 October 2009, by section 95 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 129(1)(c): amended, on 1 August 2003, by section 55(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 129(1)(d): amended, on 10 August 2005, by section 72(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 129(1)(e): added, on 10 August 2005, by section 72(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 129(2): substituted, on 1 August 2003, by section 55(2) of the Resource Management Amendment Act 2003 (2003 No 23).

**130 Public notification, submissions, and hearing, etc**

- (1) Sections 96 to 102 shall, with all necessary modifications, apply in respect of a review of any resource consent (other than a coastal permit granted in respect of a restricted coastal activity) as if—
  - (a) the notice of review under section 129 were an application for a resource consent; and
  - (b) the consent holder were the applicant for the resource consent.
- (2) Sections 96 to 102 and section 117(4), (6), (7), and (8), with all necessary modifications, apply to the review of a coastal permit granted in respect of a restricted coastal activity as if—
  - (a) the notice of review under section 129 were an application for a resource consent; and
  - (b) the consent holder were the applicant for a resource consent.
- (3) Sections 95 to 95F apply, with all necessary modifications, as if—
  - (a) the review of consent conditions were an application for a resource consent for a discretionary activity; and
  - (b) the references to a resource consent and to the activity were references only to the review of the conditions and to the effects of the change of conditions respectively.
- (4) *[Repealed]*
- (5) If a regional plan or regional coastal plan states that a rule will affect the exercise of existing resource consents under section 68(7), a consent authority—
  - (a) is not required to comply with sections 95 to 95F; but
  - (b) must hear submissions only from the consent holder if the consent holder requests (within 20 working days of service of the notice under section 129) to be heard.
- (6) Where a consent which would otherwise be heard under subsection (5) is a consent granted for a restricted coastal activity, the provisions of subsection (2) shall apply except that the only persons who may be heard in relation to the matter are the consent holder and the Minister of Conservation.
- (7) Notwithstanding subsections (5) and (6), if a consent authority considers special circumstances exist, it may require that a re-

view be notified and a hearing be held even if a plan expressly states that a rule shall affect the exercise of existing consents under section 68(7).

- (8) When reviewing the conditions of a resource consent under section 128(1)(ba), the consent authority must serve on the Minister notice of the review, and the Minister may—
- (a) make a submission to the consent authority; and
  - (b) request to be heard.

Section 130(2): substituted, on 1 October 2009, by section 96(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 130(3): substituted, on 1 August 2003, by section 56(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 130(3): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 130(4): repealed, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 130(5): substituted, on 1 August 2003, by section 56(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 130(5)(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 130(6): added, on 7 July 1993, by section 75(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 130(6): amended, on 1 October 2009, by section 96(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 130(7): added, on 7 July 1993, by section 75(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 130(8): added, on 1 August 2003, by section 56(4) of the Resource Management Amendment Act 2003 (2003 No 23).

### **131 Matters to be considered in review**

- (1) When reviewing the conditions of a resource consent, the consent authority—
- (a) shall have regard to the matters in section 104 and to whether the activity allowed by the consent will continue to be viable after the change; and
  - (aa) in the case of a review under section 128(2), must have regard to any reasons that the court provided for making the order requiring the review; and

- (b) may have regard to the manner in which the consent has been used.
- (2) Before changing the conditions of a discharge permit or a coastal permit to do something that would otherwise contravene section 15 (relating to the discharge of contaminants) or 15B to include a condition requiring the holder to adopt the best practicable option to remove or reduce any adverse effect on the environment, the consent authority shall be satisfied, in the particular circumstances and having regard to—
  - (a) the nature of the discharge and the receiving environment; and
  - (b) the financial implications for the applicant of including that condition; and
  - (c) other alternatives, including a condition requiring the observance of minimum standards of quality of the receiving environment—

that including that condition is the most efficient and effective means of removing or reducing that adverse effect.

Section 131(1): amended, on 1 October 2009, by section 97(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 131(1)(aa): inserted, on 1 October 2009, by section 97(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 131(2): amended, on 20 August 1998, by section 31 of the Resource Management Amendment Act 1997 (1997 No 104).

## **132 Decisions on review of consent conditions**

- (1) A consent authority may change the conditions of a resource consent (other than any condition as to the duration of the consent) on a review under section 128 if, and only if, 1 or more of the circumstances specified in that section applies.
- (2) Sections 106 to 116 (which relate to conditions, decisions, and notification) and sections 120 and 121 (which relate to appeals) apply, with all necessary modifications, to a review under section 128 as if—
  - (a) the review were an application for a resource consent; and
  - (b) the consent holder were an applicant for a resource consent.

- (3) A consent authority may cancel a resource consent if—
- (a) it reviews the consent under section 128(1)(c); and
  - (b) the application for the consent contained inaccuracies that the consent authority considers materially influenced the decision made on the application; and
  - (c) there are significant adverse effects on the environment resulting from the exercise of the consent.
- (4) A consent authority may also cancel a resource consent if—
- (a) it reviews the consent under section 128(2); and
  - (b) there are significant adverse effects on the environment resulting from the exercise of the consent.

Section 132(1): amended, on 7 July 1993, by section 76(1)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 132(1): amended, on 7 July 1993, by section 76(1)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 132(2): amended, on 1 October 2009, by section 98(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 132(3): substituted, on 1 October 2009, by section 98(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 132(4): substituted, on 1 October 2009, by section 98(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **133 Powers under Part 12 not affected**

Nothing in sections 127 to 132 limits the power of the Environment Court to change or cancel a resource consent by an enforcement order under Part 12.

Section 133: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **133A Minor corrections of resource consents**

A consent authority that grants a resource consent may, within 15 working days of the grant, issue an amended consent that corrects minor mistakes or defects in the consent.

Section 133A: inserted, on 10 August 2005, by section 73 of the Resource Management Amendment Act 2005 (2005 No 87).

*Transfer of consents***134 Land use and subdivision consents attach to land**

- (1) Except as provided in subsection (2), a land use consent and a subdivision consent shall attach to the land to which each relates and accordingly may be enjoyed by the owners and occupiers of the land for the time being, unless the consent expressly provides otherwise.
- (2) Subsection (1) does not apply to any land use consent to do something that would otherwise contravene section 13.
- (3) The holder of a land use consent described in subsection (2) may transfer the whole or any part of the holder's interest in the consent to any other person unless the consent expressly provides otherwise.
- (4) The transfer of the holder's interest in a consent described in subsection (2) has no effect until written notice of the transfer is given to the consent authority that granted the consent.

**135 Transferability of coastal permits**

- (1) A holder of a coastal permit—
  - (a) may transfer the whole or any part of the holder's interest in the permit to any other person:
  - (b) may not transfer the whole or any part of the holder's interest in the permit to another site—unless the consent or a rule in a regional coastal plan expressly provides otherwise.
- (2) The transfer of the holder's interest in a coastal permit under subsection (1) has no effect until written notice of the transfer is given to the consent authority that granted the permit.

Section 135(1): substituted, on 7 July 1993, by section 77 of the Resource Management Amendment Act 1993 (1993 No 65).

**136 Transferability of water permits**

- (1) A holder of a water permit granted for damming or diverting water may transfer the whole of the holder's interest in the permit to any owner or occupier of the site in respect of which the permit is granted, but may not transfer the permit to any other person or from site to site.



- (2) A holder of a water permit granted other than for damming or diverting water may transfer the whole or any part of the holder's interest in the permit—
  - (a) to any owner or occupier of the site in respect of which the permit is granted; or
  - (b) to another person on another site, or to another site, if both sites are in the same catchment (either upstream or downstream), aquifer, or geothermal field, and the transfer—
    - (i) is expressly allowed by a regional plan; or
    - (ii) has been approved by the consent authority that granted the permit on an application under subsection (4).
- (2A) A transfer under subsection (1) or subsection (2) may be for a limited period.
- (3) A transfer under any of subsections (1), (2)(a), and (2)(b)(i) shall have no effect until written notice of the transfer is received by the consent authority that granted the permit.
- (4) An application under subsection (2)(b)(ii)—
  - (a) shall be in the prescribed form and be lodged jointly by the holder of the water permit and the person to whom the interest in the water permit will transfer; and
  - (b) shall be considered in accordance with sections 39 to 42A, 88 to 115, 120, and 121 as if—
    - (i) the application for a transfer were an application for a resource consent; and
    - (ii) the consent holder were an applicant for a resource consent,—except that, and in addition to the matters set out in section 104, the consent authority shall have regard to the effects of the proposed transfer, including the effect of ceasing or changing the exercise of the permit under its current conditions, and the effects of allowing the transfer.
- (5) Where the transfer of the whole or part of the holder's interest in a water permit is notified under subsection (3), or approved under subsection (2)(b)(ii), and is not for a limited period, the original permit, or that part of the permit transferred, shall be

deemed to be cancelled and the interest or part transferred shall be deemed to be a new permit—

- (a) on the same conditions as the original permit (where subsection (3) applies); or
- (b) on such conditions as the consent authority determines under subsection (4) (where that subsection applies).

Section 136(2A): inserted, on 10 August 2005, by section 74(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 136(4)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 136(5): amended, on 10 August 2005, by section 74(2) of the Resource Management Amendment Act 2005 (2005 No 87).

### **137 Transferability of discharge permits**

- (1) The holder of a discharge permit may—
  - (a) transfer part or all of the holder's interest in the permit; and
  - (b) make the transfer for part or all of the remaining period of the permit.
- (2) The holder may make the transfer if it—
  - (a) is for the site for which the permit is granted; and
  - (b) is to—
    - (i) another owner or occupier of the site for which the permit is granted; or
    - (ii) a local authority.
- (3) The holder may make the transfer if it is for another site and is to any person, if a regional plan—
  - (a) allows the transfer; or
  - (b) allows the holder to apply to the consent authority that granted the permit to be allowed to make the transfer.
- (4) A regional plan may allow a transfer or a consent authority may allow a transfer if—
  - (a) the transfer does not worsen the actual or potential effect of any discharges on the environment; and
  - (b) the transfer does not result in any discharges that contravene a national environmental standard; and
  - (c) if the discharge is to water, both sites are in the same catchment; and

- (d) if the discharge is to air and a national environmental standard applies to a discharge to air, both sites are in the same air-shed as defined in the standard; and
  - (e) if the discharge is to air and paragraph (d) does not apply, both sites are in the same region.
- (5) An application under subsection (3)(b)—
  - (a) must be in the prescribed form; and
  - (b) must be lodged jointly by the holder of the permit and the person to whom it is proposed to transfer the interest in the permit; and
  - (c) must be considered under sections 39 to 42A, 88 to 115, 120, and 121 as if—
    - (i) the application for a transfer were an application for a resource consent; and
    - (ii) the holder were an applicant for a resource consent.
- (6) The transfer has no effect until the consent authority that granted the permit receives written notice of it.
- (7) When a consent authority receives written notice of a transfer that is made for all of the remaining period of the permit,—
  - (a) the original permit, or the part of it that relates to the part of the interest transferred, is cancelled; and
  - (b) the interest, or the part of it transferred, is a new permit on the same conditions as the original permit.

Section 137: substituted, on 10 August 2005, by section 75 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 137(5)(c): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **138 Surrender of consent**

- (1) The holder of a resource consent may surrender the consent, either in whole or part, by giving written notice to the consent authority.
- (2) A consent authority may refuse to accept the surrender of part of a resource consent where it considers that surrender of that part would—
  - (a) affect the integrity of the consent; or

- (b) affect the ability of the consent holder to meet other conditions of the consent; or
  - (c) lead to an adverse effect on the environment.
- (3) A person who surrenders a resource consent remains liable under this Act—
  - (a) for any breach of conditions of the consent which occurred before the surrender of the consent; and
  - (b) to complete any work to give effect to the consent unless the consent authority directs otherwise in its notice of acceptance of the surrender under subsection (4).
- (4) A surrender of a resource consent takes effect on receipt by the holder of a notice of acceptance of the surrender from the consent authority.

**138A Special provisions relating to coastal permits for dumping and incineration**

- (1) Without limiting section 104, when considering an application for a coastal permit to do something that would otherwise contravene section 15A(1), the consent authority shall, in having regard to the actual and potential effects of allowing the activity, have regard to—
  - (a) the nature of any discharge of any contaminant which the dumping or incineration may involve and the sensitivity of the receiving environment to adverse effects and the applicant's reasons for making the proposed choice; and
  - (b) any possible alternative methods of disposal or combustion including any involving discharge into any other receiving environment,—and, without limiting the powers of the consent authority under section 92, it may, at any reasonable time before the hearing (or, if there is no hearing, the determination) of the application, by written notice to the applicant, require the applicant to provide, by way of further information, an explanation of those matters.
- (2) Without limiting section 108, but subject to subsection (5), a coastal permit to which subsection (1) applies may include a condition requiring the holder to adopt the best practicable option to prevent or minimise any actual or likely adverse effect

on the environment of any discharge of any contaminant which may occur in the exercise of the permit; provided that before a consent authority decides to grant a coastal permit subject to such a condition, it shall be satisfied that, in the particular circumstances, and having regard to—

- (a) the nature of any discharge of a contaminant and the receiving environment; and
- (b) other alternatives, including any condition requiring the observance of minimum standards of quality of the receiving environment,—

the inclusion of the condition is the most efficient and effective means of preventing or minimising any actual or likely adverse effect on the environment.

- (3) In respect of a coastal permit to do something that would otherwise contravene section 15A(1), a consent authority may, at any time specified for that purpose in the permit, in accordance with section 129, serve notice on the holder of the permit of its intention to review the conditions of the permit for the purpose of requiring the holder to adopt the best practicable option to remove or reduce any adverse effect on the environment.
- (4) Subject to subsection (5), sections 129 to 133 shall apply to any review of a coastal permit under subsection (3) and the powers conferred on a consent authority by that subsection are in addition to the powers conferred by section 128.
- (5) Before deciding to grant a coastal permit subject to a condition described in subsection (2) and before deciding to change the conditions of a coastal permit pursuant to subsections (3) and (4), the consent authority shall be satisfied, in the particular circumstances, and having regard to—
  - (a) the nature of any discharge of a contaminant and the receiving environment; and
  - (b) the financial implications for the holder of including that condition; and
  - (c) other alternatives, including a condition requiring the observance of minimum standards of quality of the receiving environment—that including a condition in the permit requiring the holder to adopt the best practicable option to remove or reduce any

adverse effect on the environment is the most efficient and effective means of removing or reducing that adverse effect.

- (6) In every coastal permit to do something that would otherwise contravene section 15A(1), there shall be implied a condition that the holder shall, in the prescribed form and at the cost of the holder in all respects, keep such records and furnish to the Director of Maritime New Zealand such information and returns as may from time to time be required by regulations.

Section 138A: inserted, on 20 August 1998, by section 15 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 138A(6): amended, on 1 July 2005, by section 11(3) of the Maritime Transport Amendment Act 2004 (2004 No 98).

### *Certificates of compliance or existing use*

Heading: substituted, on 10 August 2005, by section 76 of the Resource Management Amendment Act 2005 (2005 No 87).

## **139 Consent authorities and Environmental Protection**

### **Authority to issue certificates of compliance**

- (1) This section applies if an activity could be done lawfully in a particular location without a resource consent.
- (2) A person may request the consent authority to issue a certificate of compliance.
- (3) A certificate states that the activity can be done lawfully in a particular location without a resource consent.
- (4) The authority may require the person to provide further information if the authority considers that the information is necessary for the purpose of applying subsection (5).
- (5) The authority must issue the certificate if—
- (a) the activity can be done lawfully in the particular location without a resource consent; and
  - (b) the person pays the appropriate administrative charge.
- (6) The authority must issue the certificate within 20 working days of the later of the following:
- (a) the date on which it received the request;
  - (b) the date on which it received the further information under subsection (4).
- (7) The certificate issued to the person must—
- (a) describe the activity and the location; and

- (b) state that the activity can be done lawfully in the particular location without a resource consent as at the date on which the authority received the request.
- (8) The authority must not issue a certificate if—
  - (a) the request for a certificate is made after a proposed plan is notified; and
  - (b) the activity could not be done lawfully in the particular location without a resource consent under the proposed plan.
- (9) Sections 357A and 357C to 358 apply to a request for a certificate.
- (10) A certificate is treated as if it were an appropriate resource consent that—
  - (a) contains the conditions specified in an applicable national environmental standard; and
  - (b) contains the conditions specified in an applicable plan.
- (11) A certificate treated as a resource consent is subject to sections 10, 10A, and 20A(2).
- (12) A certificate treated as a resource consent is subject to this Act as if it were a resource consent, except that the only sections in this Part that apply to it are sections 120, 121, 122, 125, 134, 135, 136, and 137.
- (13) If an activity relates to a matter that is or is part of a proposal of national significance for which a direction has been made under section 142(2) or 147(1)(a) or (b), a person may request a certificate from the Environmental Protection Authority and this section applies with the following modifications:
  - (a) a reference to a consent authority is to be treated as a reference to the EPA; and
  - (b) subsection (5)(b) does not apply; and
  - (c) the EPA may recover its actual and reasonable costs of dealing with the request from the person making the request.
- (14) In this section, **activity** includes a particular proposal.

Section 139: substituted, on 1 October 2009, by section 99 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**139A Consent authorities to issue existing use certificates**

- (1) A person may request the consent authority to issue a certificate that—
  - (a) describes a use of land in a particular location; and
  - (b) states that the use of the land was a use of land allowed by section 10 on the date on which the authority issues the certificate; and
  - (c) specifies the character, intensity, and scale of the use on the date on which the authority issues the certificate.
- (2) A person may request the consent authority to issue a certificate that—
  - (a) describes an activity to which section 10A or section 20A applies; and
  - (b) states that the activity was an activity allowed by section 10A or section 20A on the date on which the authority issues the certificate; and
  - (c) specifies the character, intensity, and scale of the activity on the date on which the authority issues the certificate; and
  - (d) describes the period for which the activity is allowed under section 10A or section 20A.
- (3) The consent authority may require the person to provide any further information that the authority considers it needs to determine whether it must issue the certificate.
- (4) The consent authority must issue a certificate under subsection (1) if it—
  - (a) is satisfied that the use of the land is a use of land allowed by section 10 on the date on which the authority issues the certificate; and
  - (b) receives payment of the appropriate administrative charge.
- (5) The consent authority must issue a certificate under subsection (2) if it—
  - (a) is satisfied that the activity is an activity allowed by section 10A or section 20A on the date on which the authority issues the certificate; and
  - (b) receives payment of the appropriate administrative charge.



- (6) A consent authority that must issue a certificate must do so within 20 working days after the latest of the following dates:
  - (a) the date on which the authority receives the request; and
  - (b) the date on which the authority receives all the information required under subsection (3); and
  - (c) the date on which the authority receives the payment of the appropriate administrative charge.
- (7) Subsection (8) applies if a consent authority that issued a certificate becomes aware that the information that a person provided in order to obtain the certificate contained inaccuracies.
- (8) The authority must revoke the certificate, if it is satisfied that the inaccuracies were material in satisfying the authority that it must issue the certificate.
- (9) An existing use certificate is treated as an appropriate resource consent. The provisions of this Act apply to the certificate, except for sections 87AA to 119 and 123 to 150.
- (10) Sections 357A and 357C to 358 apply in relation to the issue or revocation of an existing use certificate.

Section 139A: inserted, on 10 August 2005, by section 78 of the Resource Management Amendment Act 2005 (2005 No 87).

*Decisions on proposals of national significance*  
[Repealed]

Heading: repealed, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**Part 6AA**  
**Proposals of national significance**

Part 6AA: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**140 Outline of this Part**

- (1) This section sets out the general scheme and effect of this Part. This section is by way of explanation only and does not limit or affect the other provisions of this Part or this Act.
- (2) This Part provides the Minister with specific powers in relation to applications for resource consents, applications for changes to or cancellation of resource consent conditions, local author-

ity plan changes or variations, requests for plan changes, requests for the preparation of regional plans, and notices of requirement that are or are part of a proposal of national significance.

- (3) If exercised by the Minister, these powers set in motion one of 2 procedures by which the application, change, variation, request, or notice (**the matter**) is decided. Instead of the normal procedures set out in the Act, either a board of inquiry or the Environment Court decides the matter. A decision by a board of inquiry or the Environment Court may be challenged only by an appeal to the High Court on a question of law. If that decision is challenged, a further appeal may be taken to the Supreme Court or the Court of Appeal on a question of law, but only with the leave of the Supreme Court.
- (4) There are 3 ways in which a matter may come to the Minister for his or her decision on whether to make a direction to refer a matter to a board of inquiry or the Environment Court for decision. If the matter has been lodged with a local authority, the Minister may decide to make a direction on his or her own initiative or in response to a request from the local authority or the applicant. If the matter has been lodged with the Environmental Protection Authority, the Minister may decide to make a direction after receiving a recommendation from the EPA.
- (5) If the Minister decides not to make a direction to refer a matter to a board of inquiry or the Environment Court for decision, the matter will be processed by the local authority that, in the normal course of the Act, would be responsible for dealing with it. However, the Minister may still intervene in the process, for example, by making a submission on the matter for the Crown, appointing a project co-ordinator to advise the local authority on any thing relating to the matter, or appointing an additional hearings commissioner.

Section 140: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **141 Interpretation**

In this Part, unless the context requires another meaning,—

**applicant** means—

- (a) the person who lodged the application, for a matter that is an application for—
  - (i) a resource consent; or
  - (ii) a change to or cancellation of the conditions of a resource consent:
- (b) the person making the request, for a matter that is a request for a change to a plan—
  - (i) including a request that has been accepted by a board of inquiry under section 149M or the local authority under clause 25(2)(b) of Schedule 1; but
  - (ii) excluding a request that has been adopted by the local authority:
- (c) the person making the request, for a matter that is a request for the preparation of a regional plan—
  - (i) including a request that has been accepted by a board of inquiry under section 149M or the local authority under clause 25(2)(b) of Schedule 1; but
  - (ii) excluding a request that has been adopted by the local authority:
- (d) the requiring authority that lodged the notice of requirement, for a matter that is a notice of requirement for a designation or to alter a designation:
- (e) the heritage protection authority that lodged the notice of requirement, for a matter that is a notice of requirement for a heritage order or to alter a heritage order:
- (f) the local authority, for a matter that is—
  - (i) a change to its plan (including a request for a change that has been adopted by the local authority); or
  - (ii) a request for the preparation of a regional plan that has been adopted by a local authority; or
  - (iii) a variation to its proposed plan

**local authority** means—

- (a) the consent authority that would process an application lodged under section 88 or 127 or, if an application is lodged with the EPA, the consent authority that would

have been responsible for processing the application if it had been lodged under section 88 or 127, for a matter that is an application for a resource consent or for a change to or cancellation of the conditions of a resource consent:

- (b) the territorial authority responsible for the district plan or proposed district plan, for a matter that is a request for a change to a district plan, a change to a district plan, or a variation to a proposed district plan:
- (c) the regional council responsible for the regional plan or proposed regional plan, for a matter that is a request for the preparation of a regional plan, a request for a change to a regional plan, a change to a regional plan, or a variation to a proposed regional plan:
- (d) the territorial authority responsible for dealing with a notice of requirement given under Part 8 or, if a notice of requirement is lodged with the EPA, the territorial authority that would have been responsible for dealing with the notice if it had been given under Part 8, for a matter that is a notice of requirement

**matter** means—

- (a) an application for a resource consent; or
- (b) an application for a change to or cancellation of the conditions of a resource consent; or
- (c) a request for the preparation of a regional plan (including a request that has been accepted or adopted in whole or in part by a local authority); or
- (d) a request for a change to a plan (including a request that has been accepted or adopted in whole or in part by a local authority); or
- (e) a change to a plan; or
- (f) a variation to a proposed plan; or
- (g) a notice of requirement for a designation; or
- (h) a notice of requirement for a heritage order; or
- (i) a notice of requirement to alter a designation or a heritage order.

Section 141: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**141A Minister's power to intervene**

*[Repealed]*

Section 141A: repealed, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**141B Minister's power to call in matters that are or are part of proposals of national significance**

*[Repealed]*

Section 141B: repealed, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**141C Form and effect of Minister's direction**

*[Repealed]*

Section 141C: repealed, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**Subpart 1—Minister may make direction in relation to matter**

Subpart 1: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Matter lodged with local authority*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**142 Minister may call in matter that is or is part of proposal of national significance**

- (1) This section applies if a matter has been lodged with a local authority and—
  - (a) the Minister, at his or her own initiative, decides to apply this section; or
  - (b) the Minister receives a request from an applicant or a local authority to make a direction for the matter under subsection (2).
- (2) If the Minister considers that a matter is or is part of a proposal of national significance, the Minister may call in the matter by making a direction to—

- (a) refer the matter to a board of inquiry for decision; or
  - (b) refer the matter to the Environment Court for decision.
- (3) In deciding whether a matter is or is part of a proposal of national significance, the Minister may have regard to any relevant factor, including whether the matter—
  - (a) has aroused widespread public concern or interest regarding its actual or likely effect on the environment (including the global environment); or
  - (b) involves or is likely to involve significant use of natural and physical resources; or
  - (c) affects or is likely to affect a structure, feature, place, or area of national significance; or
  - (d) affects or is likely to affect or is relevant to New Zealand's international obligations to the global environment; or
  - (e) results or is likely to result in or contribute to significant or irreversible changes to the environment (including the global environment); or
  - (f) involves or is likely to involve technology, processes, or methods that are new to New Zealand and that may affect its environment; or
  - (g) is or is likely to be significant in terms of section 8; or
  - (h) will assist the Crown in fulfilling its public health, welfare, security, or safety obligations or functions; or
  - (i) affects or is likely to affect more than 1 region or district; or
  - (j) relates to a network utility operation that extends or is proposed to extend to more than 1 district or region.
- (4) In deciding whether to make a direction under subsection (2), the Minister must have regard to—
  - (a) the views of the applicant and the local authority; and
  - (b) the capacity of the local authority to process the matter.
- (5) A direction made under subsection (2) must—
  - (a) be in writing and be signed by the Minister; and
  - (b) state the Minister's reasons for making the direction.
- (6) If a local authority or an applicant requests the Minister to call in a matter (by making a direction under subsection (2)) and the Minister decides not to do so, the EPA must give notice of the Minister's decision to the local authority and the applicant.

Section 142: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**143 Restriction on when local authority may request call in**

A local authority (whether acting as an applicant or a local authority) may not make a request to the Minister in respect of either of the following matters unless it has complied with the consultation provisions in clauses 2, 3, and, if relevant, 4 of Schedule 1 in relation to the matter:

- (a) a change to a plan proposed by the local authority under clause 2 of Schedule 1; or
- (b) a variation to a proposed plan.

Section 143: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**144 Restriction on when Minister may call in matter**

The Minister must not call in a matter (by making a direction under section 142(2))—

- (a) more than 5 working days after the close of the last day on which submissions may be made, if the local authority has notified the matter; or
- (b) after the local authority gives notice of its decision or recommendation on the matter, if the local authority has decided not to notify the matter.

Section 144: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Matter lodged with EPA*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**145 Matter lodged with EPA**

- (1) A person may lodge 1 or more of the following matters with the EPA:
  - (a) an application for a resource consent:
  - (b) a request for the preparation of a regional plan (other than a regional coastal plan):

- (c) a request for a change to a plan.
- (2) The holder of a resource consent may lodge an application for a change to or cancellation of the conditions of the resource consent with the EPA.
- (3) A requiring authority may lodge a notice of requirement for a designation or to alter a designation with the EPA.
- (4) A heritage protection authority may lodge a notice of requirement for a heritage order or to alter a heritage order with the EPA.
- (5) If the matter is an application for a resource consent, section 88 applies, except that—
  - (a) every reference in that section to a consent authority must be read as a reference to the EPA; and
  - (b) the applicant has no right of objection under section 88(5) if the EPA determines that the application is incomplete under section 88(3).
- (6) If the matter is an application for a change to or cancellation of the conditions of a resource consent,—
  - (a) section 127(1) applies, except that every reference in that section to a consent authority must be read as a reference to the EPA; and
  - (b) section 88 applies, except that—
    - (i) the application must be treated as if it were an application for a resource consent for a discretionary activity; and
    - (ii) every reference in that section to a consent authority, a resource consent, and the effects of the activity must be read as a reference to the EPA, the change or cancellation of the conditions, and the effects of the change or cancellation, respectively; and
    - (iii) the applicant has no right of objection under section 88(5) if the EPA determines that the application is incomplete under section 88(3).
- (7) If the matter is a notice of requirement for a designation or to alter a designation, section 168 applies, except that every reference in that section to a territorial authority must be read as a reference to the EPA.



- (8) If the matter is a notice of requirement for a heritage order or to alter a heritage order, section 189 applies, except that every reference in that section to a territorial authority must be read as a reference to the EPA.
- (9) If the matter is a request for a change to a plan or the preparation of a regional plan, clause 22 of Schedule 1 applies, except that every reference in that clause to a local authority must be read as a reference to the EPA.
- (10) A person who lodges a matter with the EPA under subsections (1) to (4) must serve the local authority with notice of the matter and of its lodging with the EPA under this section.
- (11) A matter may not be lodged with the EPA under this section if—
  - (a) the same matter has been lodged with a local authority; and
  - (b) the applicant or the local authority has requested that the Minister call in the matter.

Section 145: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**146 EPA to recommend course of action to Minister**

- (1) No later than 20 working days after receiving a matter lodged under section 145, the EPA must recommend to the Minister that he or she make a direction under section 147(1)(a), (b), or (c).
- (2) The EPA may also recommend to the Minister that he or she exercise 1 or more of the following powers:
  - (a) if the EPA recommends that the Minister make a direction under section 147(1)(a) or (b),—
    - (i) to make a submission on the matter for the Crown;
    - (ii) to extend the 9-month period by which any board of inquiry appointed to determine the matter must report under section 149R(1) because special circumstances exist;
  - (b) if the EPA recommends that the Minister make a direction under section 147(1)(c),—

- (i) to make a submission on the matter for the Crown;
  - (ii) to appoint a project co-ordinator for the matter to advise the local authority;
  - (iii) if there is more than 1 matter that relates to the same proposal, and more than 1 local authority, to direct the local authorities to hold a joint hearing on the matters;
  - (iv) if the local authority appoints 1 or more hearings commissioners for the matter, to appoint an additional commissioner for the matter.
- (3) The EPA must serve a copy of its recommendation on the applicant and the local authority.
- (4) The 20-working day time frame specified in subsection (1) applies subject to section 149(5) and (6).

Section 146: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **147 Minister makes direction after EPA recommendation**

- (1) After the Minister receives a recommendation from the EPA under section 146, he or she may make a direction to—
  - (a) refer the matter to a board of inquiry for decision; or
  - (b) refer the matter to the Environment Court for decision; or
  - (c) refer the matter to the local authority.
- (2) The Minister may make a direction under subsection (1)(a) or (b) only if he or she considers that the matter is or is part of a proposal of national significance.
- (3) The Minister must apply section 142(3) in deciding whether the matter is or is part of a proposal of national significance.
- (4) In deciding on making a direction under subsection (1), the Minister must have regard to—
  - (a) the views of the applicant and the local authority; and
  - (b) the capacity of the local authority to process the matter; and
  - (c) the recommendations of the EPA.
- (5) A direction made under subsection (1) must—
  - (a) be in writing and be signed by the Minister; and

- (b) state the Minister's reasons for making the direction.
- (6) To avoid doubt, the Minister may make a direction under subsection (1) that differs from the direction recommended by the EPA under section 146(1).

Section 147: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*General provisions for matter lodged with local  
authority or EPA*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**148 Proposals relating to coastal marine area**

- (1) If a proposal of national significance relates wholly to the coastal marine area, this Part applies with the following modifications:
  - (a) references to the Minister must be read as references to the Minister of Conservation; and
  - (b) sections 149Q(3)(e) and (f) and 149R(4)(e) and (f) must be read as 1 paragraph saying “the Minister of Conservation”.
- (2) If a proposal of national significance relates partly to the coastal marine area, this Part applies with the following modifications:
  - (a) references to the Minister must be read as references to the Minister and the Minister of Conservation; and
  - (b) sections 149Q(3)(e) and (f) and 149R(4)(e) and (f) must be read as 1 paragraph saying “the Minister and the Minister of Conservation”.

Section 148: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149 EPA may request further information or commission report**

- (1) Subsection (2) applies in relation to a matter—
  - (a) that has been lodged with the EPA under section 145; or

- (b) that the Minister has called in (by making a direction under section 142(2)) after it was lodged with the local authority.
- (2) The EPA may,—
  - (a) by written notice, request an applicant to provide further information relating to the matter;
  - (b) require an EPA employee, or commission any person, to prepare a report on any issue relating to a matter (including in relation to information contained in the matter or provided under paragraph (a)).
- (3) An applicant who receives a request under subsection (2)(a) must, within 15 working days after the date of the request, do one of the following things:
  - (a) provide the information; or
  - (b) tell the EPA by written notice that the applicant agrees to provide the information; or
  - (c) tell the EPA by written notice that the applicant refuses to provide the information.
- (4) If the EPA receives a notice under subsection (3)(b), the EPA must—
  - (a) set a reasonable time within which the applicant must provide the information; and
  - (b) tell the applicant by written notice the date by which the applicant must provide the information.
- (5) If the EPA requests further information under subsection (2)(a) before making its recommendation to the Minister on a matter under section 146, the time frame referred to in section 146(1) (being the time within which the EPA must make its recommendation) begins on,—
  - (a) if the information is provided in accordance with this section, the day after the day on which the EPA receives the information; or
  - (b) if the EPA receives a notice of refusal under subsection (3)(c), the day after the day on which the EPA receives the notice; or
  - (c) in any other case, the day after the day on which the deadline for providing the information expires.
- (6) If the EPA requires a report under subsection (2)(b) before making its recommendation to the Minister on a matter under

section 146, the time frame referred to in section 146(1) (being the time within which the EPA must make its recommendation) begins on the day after the day on which the EPA receives the report.

- (7) The EPA must make its recommendation even if the applicant—
- (a) does not provide the information before the deadline; or
  - (b) refuses to provide the information.

Section 149: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*How matter processed if direction made to refer  
matter to board of inquiry or court*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149A EPA must serve Minister's direction on local authority and applicant**

As soon as practicable after the Minister makes a direction under section 142(2) or 147(1)(a) or (b), the EPA must serve the direction on—

- (a) the local authority; and
- (b) the applicant.

Section 149A: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149B Local authority's obligations if matter called in**

- (1) Subsection (2) applies to a local authority if—
  - (a) the Minister calls in a matter by making a direction under section 142(2); and
  - (b) the local authority has been served with the direction under section 149A.
- (2) The local authority must, without delay, provide the EPA with—
  - (a) the matter; and
  - (b) all information received by the local authority that relates to the matter; and

- (c) if applicable, the submissions received by the local authority on the matter.

Section 149B: substituted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149C EPA must give public notice of Minister's direction**

- (1) The EPA must give public notice of a direction the Minister makes under section 142(2) or 147(1)(a) or (b).
- (2) Subsection (1) does not apply if—
  - (a) the matter is a request for the preparation of a regional plan, or a request for a change to a plan, lodged with the local authority under clause 21 of Schedule 1 and, at the time the Minister makes the direction, the local authority—
    - (i) has not yet made a decision on the request under clause 25 of Schedule 1; or
    - (ii) has made a decision to accept the request, but has not yet prepared the proposed plan or change under clause 26(a) of Schedule 1; or
    - (iii) has made a decision to adopt the request, but has not yet notified the proposed plan or change under clause 5 of Schedule 1; or
  - (b) the matter is a request for the preparation of a regional plan, or a request for a change to a plan, lodged with the EPA under section 145; or
  - (c) the Minister instructs that the giving of public notice be delayed under section 149D; or
  - (d) the Minister decides under section 149ZC that the application or notice to which the direction relates is not to be publicly notified.
- (3) A notice under subsection (1) must—
  - (a) state the Minister's reasons for making the direction; and
  - (b) describe the matter to which the direction applies; and
  - (c) state where the matter, its accompanying information, and any further information may be viewed; and
  - (d) state that any person may make submissions on the matter to the EPA; and

- (e) state the closing date for the receipt of submissions; and
  - (f) state the address for service of the EPA and the applicant (or each applicant if more than 1).
- (4) When the EPA gives public notice under subsection (1), it must also serve a copy of the notice on—
  - (a) each owner and occupier (other than an applicant) of any land to which the matter relates; and
  - (b) each owner and occupier of any land adjoining any land to which the matter relates; and
  - (c) if applicable, every person who has made a submission on the matter to the local authority.

Section 149C: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149D Minister may instruct EPA to delay giving public notice pending application for additional consents**

- (1) The Minister may instruct the EPA to delay giving public notice of a direction under section 149C in relation to a matter.
- (2) Subsection (1) applies if the Minister considers, on reasonable grounds, that—
  - (a) resource consents, or other resource consents, will also be required in respect of the proposal to which the matter relates; and
  - (b) the nature of the proposal will be better understood if applications for the resource consents, or other resource consents, are lodged before proceeding further with the matter.
- (3) The EPA must, without delay, give notice to the local authority and the applicant of the instruction under subsection (1).
- (4) The Minister may, at any time, rescind an instruction given under subsection (1) and instruct the EPA to give public notice of the direction concerned under section 149C.

Section 149D: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149E EPA to receive submissions on matter if public notice of direction has been given**

- (1) Any person (including the Minister, for the Crown) may make a submission to the EPA about a matter for which—

- (a) the Minister has made a direction under section 142(2) or 147(1)(a) or (b); and
  - (b) public notice has been given under section 149C.
- (2) Subsection (1) applies—
  - (a) whether or not the person has already made a submission to the local authority on the matter; but
  - (b) subject to subsections (5) to (8).
- (3) A submission must be—
  - (a) in the prescribed form; and
  - (b) served—
    - (i) on the EPA, within the time allowed under subsection (9); and
    - (ii) on the applicant, as soon as practicable after service on the EPA.
- (4) A submission must state whether it supports the matter, it opposes the matter, or it is neutral.
- (5) If the person is a trade competitor of the applicant, the person may make a submission only if directly affected by an effect of the activity to which the matter relates, and the effect—
  - (a) adversely affects the environment; and
  - (b) does not relate to trade competition or the effects of trade competition.
- (6) However, subsection (5) does not apply if the matter is a notice of requirement for a heritage order (or to alter a heritage order), a request for the preparation of a regional plan, a request for a change to a plan, a change to a plan, or a variation to a proposed plan.
- (7) If the matter is a change to a plan proposed by a local authority under clause 2 of Schedule 1, or a variation to a proposed plan, the person—
  - (a) must not make a submission if the person could gain an advantage in trade competition through the submission; and
  - (b) may make a submission only if directly affected by an effect of the change or variation that—
    - (i) adversely affects the environment; and
    - (ii) does not relate to trade competition or the effects of trade competition.



- (8) If the matter is a request for the preparation of a regional plan, or a request for a change to a plan, a person who is a trade competitor of the person who made the request may make a submission only if directly affected by an effect of the proposed plan or change that—
  - (a) adversely affects the environment; and
  - (b) does not relate to trade competition or the effects of trade competition.
- (9) The closing date for making a submission is 20 working days after the day on which public notice of the direction is given.
- (10) Any submissions on the matter received by the local authority before the matter is called in (by a direction being made under section 142(2)) must be treated as having been made to the EPA under this section.

Section 149E: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149F EPA to receive further submissions if matter is request, change, or variation**

- (1) Subsection (2) applies if the matter for which the Minister makes a direction under section 142(2) or 147(1)(a) or (b) is a request for the preparation of a regional plan, a request for a change to a plan, a change to a plan, or a variation to a proposed plan.
- (2) The EPA must produce a summary of all the submissions on the matter received under section 149E and give public notice of—
  - (a) the availability of a summary of submissions on the matter; and
  - (b) where the summary and the submissions can be inspected; and
  - (c) the fact that no later than 10 working days after the day on which this public notice is given, the persons described in subsection (3) may make a further submission on the matter; and
  - (d) the date of the last day for making further submissions (as calculated under paragraph (c)); and
  - (e) the address for service of the EPA.

- (3) The following persons may make a further submission on the matter:
  - (a) any person representing a relevant aspect of the public interest; and
  - (b) any person that has an interest in the request, change, or variation greater than the interest that the general public has; and
  - (c) the local authority.
- (4) However, a further submission may be only in support of or in opposition to the submissions made on a matter under section 149E.
- (5) A further submission must be in the prescribed form.
- (6) A person who makes a further submission under subsection (3) must serve a copy of it on—
  - (a) the applicant; and
  - (b) the person who made the submission under section 149E to which the further submission relates.
- (7) The further submission must be served no later than 5 working days after the day on which the person provides the EPA with the further submission.

Section 149F: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149G EPA must provide board or court with necessary information**

- (1) This section applies if a matter is referred to a board of inquiry or the Environment Court under this Part.
- (2) The EPA must provide the board of inquiry or Environment Court, as the case may be, with each of the following things as soon as is reasonably practicable after receiving it:
  - (a) the matter;
  - (b) all the information received by the EPA that relates to the matter;
  - (c) the submissions received by the EPA on the matter.
- (3) The EPA must also commission the local authority to prepare a report on the key issues in relation to the matter that includes—
  - (a) any relevant provisions of a national policy statement, a New Zealand coastal policy statement, a regional policy

- statement or proposed regional policy statement, and a plan or proposed plan; and
  - (b) a statement on whether all required resource consents in relation to the proposal to which the matter relates have been applied for; and
  - (c) if applicable, the activity status of all proposed activities in relation to the matter.
- (4) The EPA must provide a copy of the report to—
- (a) the board of inquiry or the Environment Court, as the case may be; and
  - (b) the applicant; and
  - (c) every person who made a submission on the matter.

Section 149G: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149H Local authority may not notify further change or variation in certain circumstances**

If the Minister makes a direction under section 142(2) or 147(1)(a) or (b) to refer any of the following matters to a board of inquiry or the Environment Court, the local authority must not notify a further change or variation relating to the same issue until after the board or the court, as the case may be, has made a decision on the matter:

- (a) a matter that is a change to a plan; or
- (b) a matter that is a variation to a proposed plan; or
- (c) a matter that is a request for the preparation of a regional plan or a request for a change to a plan (including a request that has been accepted or adopted by the local authority or accepted by a board of inquiry).

Section 149H: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149I Limitation on withdrawal of change or variation**

- (1) A local authority may withdraw a change that was notified under clause 5 of Schedule 1, or a variation to a proposed plan, for which the Minister has made a direction under section 142(2) no later than 5 working days after the close of the last day on which further submissions may be made under section 149F.

- (2) An applicant may withdraw the applicant's request for a proposed regional plan, or request for a change to a plan, for which the Minister has made a direction under section 142(2) or 147(1)(a) or (b) no later than 5 working days after the close of the last day on which further submissions may be made under section 149F.

Section 149I: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### Subpart 2—How matter decided if direction made to refer matter to board of inquiry or court

Subpart 2: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### *Matter decided by board of inquiry*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **149J Minister to appoint board of inquiry**

- (1) This section applies if the Minister makes a direction under section 142(2)(a) or 147(1)(a) to refer a matter to a board of inquiry for decision.
- (2) As soon as practicable after making the direction, the Minister must appoint a board of inquiry to decide the matter.
- (3) The Minister must appoint—
- (a) no fewer than 3, but no more than 5, members; and
  - (b) 1 member as the chairperson, who must be a current, former, or retired Environment Judge or a retired High Court Judge.
- (4) A member of a board of inquiry is not liable for anything the member does, or omits to do, in good faith in performing or exercising the functions, duties, and powers of the board.

Section 149J: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **149K How members appointed**

- (1) The Minister must comply with this section when appointing a board of inquiry under section 149J.

- (2) The Minister must seek suggestions for members of the board from the local authority.
- (3) However, the Minister may appoint a person as a member of the board whether or not he or she receives a suggestion for the person under subsection (2).
- (4) In appointing members, the Minister must consider the need for the board to have available to it, from its members, knowledge, skill, and experience relating to—
  - (a) this Act; and
  - (b) the matter or type of matter that the board will be considering; and
  - (c) tikanga Māori; and
  - (d) the local community.

Section 149K: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **149L Conduct of inquiry**

- (1) A board of inquiry appointed to determine a matter under section 149J may, in conducting its inquiry, exercise any of the powers, rights, and discretions of a consent authority under sections 92 to 92B and 99 to 100 as if—
  - (a) the matter were an application for a resource consent; and
  - (b) every reference in those sections to an application or an application for a resource consent were a reference to the matter.
- (2) If a hearing is to be held, the board must—
  - (a) fix a place and the commencement date and time for the hearing; and
  - (b) give not less than 10 working days' notice of the matters stated in paragraph (a) to—
    - (i) the applicant; and
    - (ii) every person who made a submission on the matter stating that he or she wished to be heard and who has not subsequently advised the board that he or she no longer wishes to be heard.
- (3) A hearing must be held at a place near to the area to which the matter relates.
- (4) A board of inquiry—

- (a) must keep a full record of any hearings or proceedings;
- (b) may permit a party to question any other party or witness;
- (c) may permit cross-examination.

Section 149L: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149M Process if matter is request for regional plan or change and particular circumstances apply**

- (1) This section applies if the matter before a board of inquiry is a request for the preparation of a regional plan, or a request for a change to a plan, and—
  - (a) the request is lodged with the EPA under section 145; or
  - (b) the request is lodged with the local authority under clause 21 of Schedule 1 but, at the time the Minister made the direction under section 142(2) in relation to the request, the local authority had not yet made a decision on the request under clause 25 of Schedule 1.
- (2) The board may only—
  - (a) accept the request entirely under clause 25(2)(b) of Schedule 1; or
  - (b) reject the request entirely under clause 25(4) of Schedule 1.
- (3) To make a decision under subsection (2), the board—
  - (a) has all the powers of a local authority under clauses 23 and 24 of Schedule 1; and
  - (b) must consult the local authority on its views before making its decision.
- (4) If the board accepts the request,—
  - (a) the board must serve notice of its decision on the applicant and the local authority; and
  - (b) the local authority must prepare the proposed plan or change in accordance with section 149N; and
  - (c) the EPA must give public notice of the proposed plan or change, invite submissions on it under section 149O, and invite further submissions on it under section 149F; and
  - (d) the board must—

- (i) conduct an inquiry on the proposed plan or change in accordance with sections 149L and 149P(1); and
  - (ii) apply section 149P(6) or (7), as the case may be; and
  - (iii) produce a draft report on the proposed plan or change under section 149Q; and
  - (iv) produce a final report on the proposed plan or change under section 149R.
- (5) If the board rejects the request, the board must serve notice of its decision on the applicant and the local authority.

Section 149M: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149N Process if section 149M applies or proposed plan or change not yet prepared**

- (1) Subsections (2) to (4) apply if—
  - (a) a board of inquiry has accepted a request for the preparation of a regional plan, or a request for a change to a plan, under section 149M; or
  - (b) a local authority has accepted a request for the preparation of a regional plan, or a request for a change to a plan, under clause 25(2)(b) of Schedule 1 but, at the time the Minister made the direction under section 142(2) in relation to the request, the local authority had not yet prepared the proposed plan or change under clause 26(a) of Schedule 1.
- (2) The local authority must prepare the proposed plan or change in consultation with the applicant as if clause 26(a) of Schedule 1 applied.
- (3) The local authority must then serve a copy of the proposed plan or change on the EPA,—
  - (a) if the circumstances in subsection (1)(a) apply, no later than 4 months after the local authority was served with notice of the board's decision under section 149M(4);
  - (b) if the circumstances in subsection (1)(b) apply, no later than 4 months after the local authority was served with the Minister's direction under section 149A.

- (4) The local authority must also give notice to the EPA of any rules in the proposed plan or change that will have legal effect under subsection (9) on and from the date on which the EPA gives public notice of the proposed plan or change under section 149O.
- (5) Subsections (6) to (8) apply if a local authority has adopted a request for the preparation of a regional plan, or a request for a change to a plan, under clause 25(2)(a) of Schedule 1 but, at the time the Minister made the direction under section 142(2) in relation to the request, the local authority had not yet notified the proposed plan or change under clause 5 of Schedule 1.
- (6) The local authority must, no later than 4 months after the local authority was served with the Minister's direction under section 149A,—
  - (a) serve a copy of the proposed plan or change on the EPA; and
  - (b) give notice to the EPA of any rules in the proposed plan or change that will have legal effect under subsection (8) on and from the date on which the EPA gives public notice of the proposed plan or change under section 149O.
- (7) A rule in a proposed plan or change served on the EPA under subsection (6) has legal effect only once a decision is made by the board of inquiry or court.
- (8) However, a rule has legal effect on and from the date on which the EPA gives public notice of the proposed plan or change under section 149O if the rule—
  - (a) protects or relates to water, air, or soil (for soil conservation); or
  - (b) protects areas of significant indigenous vegetation; or
  - (c) protects areas of significant habitats of indigenous fauna; or
  - (d) protects historic heritage; or
  - (e) provides for or relates to an aquaculture management area.
- (9) A rule included in a proposed plan or change served on the EPA under subsection (3) that provides for or relates to an aquaculture management area has legal effect on and from the



date that public notice of the proposed plan or change is given under section 149O.

Section 149N: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149O Public notice and submissions where EPA receives proposed plan or change from local authority under section 149N**

- (1) This section applies where the EPA receives a proposed plan or change proposed by a local authority under section 149N.
- (2) On receiving a copy of the proposed plan or change, the EPA must give public notice of the proposed plan or change stating—
  - (a) the Minister's reasons for making a direction in relation to the matter; and
  - (b) where the proposed plan or change, accompanying information, and any other information may be viewed; and
  - (c) any rule in the proposed plan or change that has legal effect on and from the date that public notice of the proposed plan or change is given under section 149O; and
  - (d) that submissions on the proposed plan or change may be made by any person to the EPA; and
  - (e) the closing date for receiving submissions; and
  - (f) the address for service of the EPA and the applicant.
- (3) Any person may make a submission on a proposed plan or change for which public notice is given under subsection (2) and, for that purpose, section 149E(3), (4), and (8) apply.
- (4) However, the closing date for making a submission under subsection (3) is 20 working days after the day on which public notice of the proposed plan or change is given under subsection (2).
- (5) On receiving a copy of the proposed plan or change, the EPA must also provide the board of inquiry with a copy of the proposed plan or change.
- (6) When the EPA gives public notice under subsection (2), it must also serve a copy of the notice on—

- (a) each owner and occupier (other than an applicant) of any land to which the matter relates; and
- (b) each owner and occupier of any land adjoining any land to which the matter relates.

Section 149O: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **149P Consideration of matter by board**

- (1) A board of inquiry considering a matter must—
  - (a) have regard to the Minister's reasons for making a direction in relation to the matter; and
  - (b) consider any information provided to it by the EPA under section 149G; and
  - (c) act in accordance with subsection (2), (3), (4), (5), (6), or (7), as the case may be.
- (2) A board of inquiry considering a matter that is an application for a resource consent must apply sections 104 to 112 and 138A as if it were a consent authority.
- (3) A board of inquiry considering a matter that is an application for a change to or cancellation of the conditions of a resource consent must apply sections 104 to 112 as if—
  - (a) it were a consent authority and the application were an application for resource consent for a discretionary activity; and
  - (b) every reference to a resource consent and to the effects of the activity were a reference to the change or cancellation of a condition and the effects of the change or cancellation, respectively.
- (4) A board of inquiry considering a matter that is a notice of requirement for a designation or to alter a designation—
  - (a) must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority; and
  - (b) may—
    - (i) cancel the requirement; or
    - (ii) confirm the requirement; or
    - (iii) confirm the requirement, but modify it or impose conditions on it as the board thinks fit; and

- (c) may waive the requirement for an outline plan to be submitted under section 176A.
- (5) A board of inquiry considering a matter that is a notice of requirement for a heritage order or to alter a heritage order—
  - (a) must have regard to the matters set out in section 191(1); and
  - (b) may—
    - (i) cancel the requirement; or
    - (ii) confirm the requirement; or
    - (iii) confirm the requirement, but modify it or impose conditions on it as the board thinks fit (including a condition that the heritage protection authority reimburse the owner of the place concerned for any additional costs of upkeep of the place resulting from the making or the modifying of the order).
- (6) A board of inquiry considering a matter that is a variation to a proposed regional plan, a proposed regional plan, or a change to a regional plan—
  - (a) must apply clause 10(1) to (3) of Schedule 1 as if it were a local authority; and
  - (b) may exercise the powers under section 293 as if it were the Environment Court; and
  - (c) must apply sections 66 to 70B and 77A to 77D as if it were a regional council.
- (7) A board of inquiry considering a matter that is a change to a district plan or a variation to a proposed district plan—
  - (a) must apply clause 10(1) to (3) of Schedule 1 as if it were a local authority; and
  - (b) may exercise the powers under section 293 as if it were the Environment Court; and
  - (c) must apply sections 74 to 77D as if it were a territorial authority.

Section 149P: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **149Q Board to produce draft report**

- (1) As soon as practicable after a board of inquiry has completed its inquiry on a matter, it must—

- (a) prepare a draft decision; and
  - (b) produce a draft written report.
- (2) The draft report—
  - (a) must state the board's draft decision; and
  - (b) must give reasons for the decision; and
  - (c) must include a statement of the principal issues that were in contention; and
  - (d) must include the main findings on the principal issues that were in contention; and
  - (e) may recommend that changes be made to a plan, regional policy statement, national policy statement, or New Zealand coastal policy statement (being changes in addition to any changes that may result from the implementation of the draft decision); and
  - (f) may recommend that a national policy statement, a New Zealand coastal policy statement, or a national environmental standard be issued or revoked.
- (3) The EPA must provide a copy of the draft report to—
  - (a) the applicant; and
  - (b) the local authority; and
  - (c) any other relevant local authorities; and
  - (d) the persons who made submissions on the matter; and
  - (e) the Minister of Conservation, if the report relates to the functions of the Minister of Conservation under this Act; and
  - (f) the Minister; and
  - (g) if the matter to which the report relates is a notice of requirement, the landowners and occupiers directly affected by the draft decision.
- (4) The EPA must invite the persons to whom it sends the draft report to send any comments on minor or technical aspects of the report to the EPA no later than 20 working days after the date of the invitation.
- (5) Comments on minor or technical aspects of the report—
  - (a) include comments on minor errors in the report, on the wording of conditions specified in the report, or that there are omissions in the report (for example, the report does not address a certain issue); but

- (b) do not include comments on the board's decision or its reasons for the decision.

Section 149Q: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149R Board to produce final report**

- (1) As soon as practicable after the 20 working days referred to in section 149Q(4), a board of inquiry must—
  - (a) consider any comments received by the EPA in accordance with section 149Q; and
  - (b) make its decision; and
  - (c) produce a written report.
- (2) The board must do everything under subsection (1) no later than 9 months after—
  - (a) the day on which the EPA gave public notice under section 149C of the Minister's direction under section 142(2) or 147(1)(a) in relation to the matter, unless paragraph (b) or (c) applies; or
  - (b) the day on which the EPA gave public notice under section 149O of the proposed plan or change, if that section applies to the matter before the board; or
  - (c) the day on which the EPA gave limited notification under section 149ZC(4), if the EPA gave that notice for the matter before the board.
- (3) The report—
  - (a) must state the board's decision; and
  - (b) must give reasons for the decision; and
  - (c) must include a statement of the principal issues that were in contention; and
  - (d) must include the main findings on the principal issues that were in contention; and
  - (e) may recommend that changes be made to a plan, regional policy statement, national policy statement, or New Zealand coastal policy statement (being changes in addition to any changes that may result from the implementation of the decision); and
  - (f) may recommend that a national policy statement, a New Zealand coastal policy statement, or a national environmental standard be issued or revoked.

- (4) The EPA must send a copy of the report to—
  - (a) the applicant; and
  - (b) the local authority; and
  - (c) any other relevant local authorities; and
  - (d) the persons who made submissions on the matter; and
  - (e) the Minister of Conservation, if the report relates to the functions of the Minister of Conservation under this Act; and
  - (f) the Minister; and
  - (g) if the matter to which the report relates is a notice of requirement, the landowners and occupiers directly affected by the decision.
- (5) The EPA must publish the board's report and give public notice of where and how copies of it can be obtained.
- (6) Nothing in section 37(1) applies to the time periods or the requirements in this section that apply to a board.

Section 149R: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149S Minister may extend time by which board must report**

- (1) Despite section 149R(2), the Minister may, at any time (including before the board is appointed), grant an extension or extensions of time in which a board of inquiry must produce its final report.
- (2) The Minister may grant an extension only if—
  - (a) he or she considers that special circumstances apply; and
  - (b) the time period as extended does not exceed 18 months from—
    - (i) the day on which the EPA gives public notice under section 149C of the Minister's direction under section 142(2) or 147(1)(a) in relation to the matter, unless subparagraph (ii) or (iii) applies; or
    - (ii) the day on which the EPA gives public notice under section 149O of the proposed plan or change, if that section applies to the matter before the board; or

- (iii) the day on which the EPA gives limited notification under section 149ZC(4), if the EPA gives that notice for the matter before the board.
- (3) However, the Minister may grant an extension that results in a time period greater than that described in subsection (2)(b) if the applicant agrees.
- (4) The EPA must give written notice to the following persons if the Minister grants an extension under subsection (1), or each time the Minister grants an extension under subsection (1), as the case may be:
  - (a) the applicant; and
  - (b) the local authority; and
  - (c) any person who made a submission on the matter.

Section 149S: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### *Matter decided by Environment Court*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **149T Matter referred to Environment Court**

- (1) This section applies if the Minister makes a direction under section 142(2)(b) or 147(1)(b) to refer a matter to the Environment Court for decision.
- (2) The matter is referred to the Environment Court by the applicant lodging with the court—
  - (a) a notice of motion specifying the orders sought and the grounds on which the application is made; and
  - (b) a supporting affidavit on the circumstances giving rise to the application.
- (3) The applicant must—
  - (a) serve a copy of the notice of motion and the affidavit on the local authority and, if applicable, every person who made a submission on the matter; and
  - (b) serve the documents as soon as is reasonably practicable after lodging them; and
  - (c) tell the Registrar when the documents have been served.
- (4) If the matter is a change to a district plan proposed by a territorial authority under clause 2 of Schedule 1, or a variation to

a proposed district plan, the applicant must also serve a copy of the notice of motion and affidavit on any requiring authority that made a requirement under clause 4 of Schedule 1 in respect of the change or variation.

- (5) The court may at any time direct the applicant to serve a copy of the notice of motion and affidavit on any other person.
- (6) Section 274 applies to a notice of motion lodged under this section.

Section 149T: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **149U Consideration of matter by Environment Court**

- (1) The Environment Court, when considering a matter referred to it under section 149T, must—
  - (a) have regard to the Minister's reasons for making a direction in relation to the matter; and
  - (b) consider any information provided to it by the EPA under section 149G; and
  - (c) act in accordance with subsection (2), (3), (4), (5), (6), or (7), as the case may be.
- (2) If considering a matter that is an application for a resource consent, the court must apply sections 104 to 112 and 138A as if it were a consent authority.
- (3) If considering a matter that is an application for a change to or cancellation of the conditions of a resource consent, the court must apply sections 104 to 112 as if—
  - (a) it were a consent authority and the application were an application for resource consent for a discretionary activity; and
  - (b) every reference to a resource consent and to the effects of the activity were a reference to the change or cancellation of a condition and the effects of the change or cancellation, respectively.
- (4) If considering a matter that is a notice of requirement for a designation or to alter a designation, the court—
  - (a) must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority; and
  - (b) may—



- (i) cancel the requirement; or
    - (ii) confirm the requirement; or
    - (iii) confirm the requirement, but modify it or impose conditions on it as the court thinks fit; and
  - (c) may waive the requirement for an outline plan to be submitted under section 176A.
- (5) If considering a matter that is a notice of requirement for a heritage order or to alter a heritage order, the court—
- (a) must have regard to the matters set out in section 191(1); and
  - (b) may—
    - (i) cancel the requirement; or
    - (ii) confirm the requirement; or
    - (iii) confirm the requirement, but modify it or impose conditions on it as the court thinks fit (including a condition that the heritage protection authority reimburse the owner of the place concerned for any additional costs of upkeep of the place resulting from the making or the modifying of the order).
- (6) If considering a matter that is a variation to a proposed regional plan, a proposed regional plan, or a change to a regional plan, the court—
- (a) must apply clause 10(1) to (3) of Schedule 1 as if it were a local authority; and
  - (b) may exercise the powers under section 293; and
  - (c) must apply sections 66 to 70B and 77A to 77D as if it were a regional council.
- (7) If considering a matter that is a change to a district plan or a variation to a proposed district plan, the court—
- (a) must apply clause 10(1) to (3) of Schedule 1 as if it were a local authority; and
  - (b) may exercise the powers under section 293; and
  - (c) must apply sections 74 to 77D as if it were a territorial authority.
- (8) Part 11 applies to proceedings under this section, except if inconsistent with any provision of this section.

Section 149U: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Appeals*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149V Appeal from decisions only on question of law**

- (1) A person described in section 149R(4)(a) to (f) may appeal to the High Court against a decision under section 149R(1) or 149U, but only on a question of law.
- (2) An applicant for a matter to which section 149M applies may appeal to the High Court against a decision under subsection (2)(b) of that section, but only on a question of law.
- (3) If the appeal is from a decision of a board of inquiry, sections 300 to 307 apply to the appeal subject to the following:
  - (a) every reference to the Environment Court in those sections must be read as a reference to the board of inquiry; and
  - (b) those sections must be read with any other necessary modifications; and
  - (c) the High Court Rules apply if a procedural matter is not dealt with in the sections.
- (4) If the appeal is from a decision of the Environment Court, section 299 applies to the appeal.
- (5) No appeal may be made to the Court of Appeal from a determination of the High Court under this section.
- (6) However, a party may apply to the Supreme Court for leave to bring an appeal to that court against a determination of the High Court and, for this purpose, sections 12 to 15 of the Supreme Court Act 2003 apply with any necessary modifications.
- (7) If the Supreme Court refuses to give leave for an appeal (on the grounds that exceptional circumstances have not been established under section 14 of the Supreme Court Act 2003), but considers that a further appeal from the determination of the High Court is justified, the court may remit the proposed appeal to the Court of Appeal.
- (8) No appeal may be made from any appeal determined by the Court of Appeal in accordance with subsection (7).
- (9) Despite any enactment to the contrary,—

- (a) an application for leave for the purposes of subsection (6) must be filed no later than 10 working days after the determination of the High Court; and
- (b) the Supreme Court or the Court of Appeal, as the case may be, must determine an application for leave, or an appeal, to which this section applies as a matter of priority and urgency.

Section 149V: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### Subpart 3—Miscellaneous provisions

Subpart 3: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### *Process after decision of board of inquiry or court on certain matters*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **149W Local authority to implement decision of board or court about proposed regional plan or change or variation**

- (1) Subsections (2) and (3) apply to a local authority if—
  - (a) a board of inquiry or the Environment Court considers a matter that is a proposed regional plan or a change to a plan or a variation to a proposed plan; and
  - (b) the board or the court, as the case may be, decides that changes must be made to the proposed plan, change, or variation.
- (2) As soon as practicable after receiving notice of the decision of the board or the court under section 149R(4) or 149U, as the case may be,—
  - (a) the local authority must amend the proposed plan, change, or variation under clause 16(1) of Schedule 1, and that clause applies accordingly as if the decision were a direction of the Environment Court under section 293; and
  - (b) if the decision is in respect of a proposed regional plan, or a change or variation to a district or regional plan

- (other than a regional coastal plan), the local authority must—
- (i) approve the proposed plan, change, or variation under clause 17 of Schedule 1; and
  - (ii) make the plan, change, or variation operative by giving public notice in accordance with clause 20 of Schedule 1; and
- (c) if the decision is in respect of a change or variation to a regional coastal plan, the local authority must—
- (i) adopt the change or variation under clause 18(1) of Schedule 1; and
  - (ii) send the plan to the Minister of Conservation for his or her approval in accordance with clause 19 of Schedule 1; and
  - (iii) following approval of the change or variation by the Minister of Conservation, make the change operative by giving public notice in accordance with clause 20 of Schedule 1.
- (3) For the purposes of subsection (2)(c)(ii), clause 19 of Schedule 1 must be read as if the reference to any direction of the Environment Court were a reference to any decision of the Environment Court or a board of inquiry.
- (4) A local authority must comply with section 175 if a board of inquiry or the Environment Court confirms a requirement under this Part.

Section 149W: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **149X Residual powers of local authority**

- (1) Subsection (2) applies to a resource consent that has been granted by a board of inquiry or the Environment Court under section 149R or 149U, as the case may be.
- (2) The consent authority concerned has all the functions, duties, and powers in relation to the resource consent as if it had granted the consent itself.
- (3) Subsection (4) applies to a requirement confirmed (with or without modifications) by a board of inquiry or the Environment Court under section 149R or 149U.

- (4) The territorial authority concerned has all the functions, duties, and powers in relation to the requirement as if it had dealt with the matter itself.

Section 149X: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Minister makes direction to refer matter to local authority*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149Y EPA must refer matter to local authority if direction made by Minister**

- (1) This section applies if the Minister makes a direction under section 147(1)(c) to refer a matter lodged with the EPA to the local authority.
- (2) The EPA must give notice of the Minister's direction to the local authority and the applicant.
- (3) The EPA must also—
- (a) provide the local authority with—
    - (i) the matter; and
    - (ii) all the material received by the EPA that relates to the matter; and
  - (b) inform the local authority that it must process the matter in accordance with section 149Z.

Section 149Y: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149Z Local authority must process referred matter**

- (1) A local authority must process a matter referred to it under section 149Y(3) in accordance with this section, subject to any action the Minister may take under section 149ZA.
- (2) If the matter is an application for a resource consent, the local authority must treat the application as if—
- (a) it had been made to the local authority under section 88(1); and
  - (b) it had been lodged on the date that the local authority received notification from the EPA under section 149Y(3); and

- (c) section 88(3) did not apply to the application.
- (3) If the matter is a notice of requirement for a designation or to alter a designation, the local authority must treat the notice as if it had been—
  - (a) given to the local authority under section 168; and
  - (b) lodged on the date that the local authority received notification from the EPA under section 149Y(3).
- (4) However, if the matter is a notice of requirement for a designation, or to alter a designation, to which section 168A(1) or 181(4) applies, the local authority must instead comply with section 168A or 181 (as the case may be), with all necessary modifications, as if it had decided to issue the notice of requirement under that section on the date that the matter was referred to it under section 149Y(3).
- (5) If the matter is a notice of requirement for a heritage order or to alter a heritage order, the local authority must treat the notice as if it had been—
  - (a) given to the local authority under section 189; and
  - (b) lodged on the date that the local authority received notification from the EPA under section 149Y(3).
- (6) However, if the matter is a notice of requirement for a heritage order, or to alter a heritage order, to which section 189A(1) or 195A(5) applies, the local authority must instead comply with section 189A or 195A (as the case may be), with all necessary modifications, as if it had decided to issue the notice of requirement under that section on the date that the matter was referred to it under section 149Y(3).
- (7) If the matter is a request for the preparation of a regional plan or a change to a plan, the local authority must treat the request as if it had been—
  - (a) made to the local authority under clause 21 of Schedule 1; and
  - (b) lodged on the date that the local authority received notification from the EPA under section 149Y(3).
- (8) If the matter is an application for a change to or cancellation of the conditions of a resource consent, the local authority must treat the application as if it had been—
  - (a) made to the local authority under section 127; and

- (b) lodged on the date that the local authority received notification from the EPA under section 149Y(3).

Section 149Z: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Minister's powers to intervene in matter*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149ZA Minister's powers to intervene in matter**

- (1) The Minister may intervene in a matter at any time by exercising 1 or more of the following powers in relation to the matter:
  - (a) to make a submission on the matter for the Crown;
  - (b) to appoint a project co-ordinator for the matter to advise the local authority;
  - (c) if there is more than 1 matter that relates to the same proposal, and more than 1 local authority, to direct the local authorities to hold a joint hearing on the matters;
  - (d) if the local authority appoints 1 or more hearings commissioners for the matter, to appoint an additional commissioner for the matter.
- (2) In deciding whether to act under subsection (1), the Minister must consider the extent to which the matter is or is part of a proposal of national significance.
- (3) If the Minister makes a direction under subsection (1)(c),—
  - (a) the local authorities must hold the joint hearing; and
  - (b) section 102 applies, with the necessary modifications, to the hearing.
- (4) If the Minister appoints a hearings commissioner under subsection (1)(d), the commissioner has the same powers, functions, and duties as the commissioner or commissioners appointed by the local authority.
- (5) To avoid doubt, if the matter has come before the Minister by way of an application lodged with the EPA, the Minister may exercise the powers under subsection (1) in relation to the matter whether or not the EPA made any recommendations about the matter to the Minister under section 146(2).

Section 149ZA: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Process if related matter already subject to  
direction to refer to board of inquiry or court*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149ZB How EPA must deal with certain applications and  
notices of requirement**

- (1) This section applies to a matter that is an application or notice of requirement described in subsection (2) if—
  - (a) the activity that the application or notice relates to is part of a proposal of national significance in relation to which 1 or more matters have already been subject to a direction under section 142(2) or 147(1)(a) or (b); and
  - (b) the application or notice was lodged with the EPA either—
    - (i) before the board of inquiry or Environment Court, as the case may be, has determined the matter or matters already subject to a direction under section 142(2) or 147(1)(a) or (b); or
    - (ii) after the matter or matters have been determined by the board or the court and the matter or matters have been granted or confirmed.
- (2) The applications and notices are—
  - (a) an application for a resource consent:
  - (b) an application for a change to or cancellation of the conditions of a resource consent:
  - (c) a notice of requirement to alter a designation:
  - (d) a notice of requirement to alter a heritage order.
- (3) In addition to making a recommendation to the Minister under section 146 on whether to make a direction under section 147(1)(a), (b), or (c) in relation to the application or notice, the EPA must also recommend whether the application or notice should be notified under sections 95A to 95F.

Section 149ZB: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).



**149ZC Minister to decide whether application or notice of requirement to be notified**

- (1) If the Minister decides to make a direction under section 147(1)(a) or (b) for an application or notice of requirement to which section 149ZB applies, the Minister must also decide whether to notify the application or notice.
- (2) The Minister must apply sections 95A to 95F (but without the time limit specified by section 95), with all necessary modifications, in making his or her decision under subsection (1).
- (3) If the Minister decides that the application or notice is to be publicly notified, sections 149C to 149E apply.
- (4) If the Minister decides that the application or notice is not to be publicly notified, but is to be subject to limited notification, the EPA must give limited notification of the application or notice (but ignoring the time limit specified by section 95).
- (5) Any person who receives a notice under subsection (4) may make a submission to the EPA and, for that purpose, section 149E(3) to (6) apply.
- (6) However, the closing date for making a submission under subsection (5) is 20 working days after the day on which the EPA gives the notice under subsection (4).

Section 149ZC: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Costs of processes under this Part*

Heading: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**149ZD Costs of processes under this Part recoverable from applicant**

- (1) A local authority may recover from an applicant the actual and reasonable costs incurred by the local authority in complying with this Part.
- (2) The EPA may recover from a person the actual and reasonable costs incurred by the EPA in providing assistance to the person prior to a matter being lodged with the EPA (whether or not the matter is subsequently lodged).

- (3) The EPA may recover from an applicant the actual and reasonable costs incurred by the EPA in exercising its functions and powers under this Part (including the costs in respect of secretarial and support services provided to a board of inquiry by the EPA).
- (4) The Minister may recover from an applicant the actual and reasonable costs incurred in relation to a board of inquiry appointed under this Part.
- (5) The local authority, EPA, or Minister must, upon request by an applicant, provide an estimate of the costs likely to be recovered under this section.
- (6) When recovering costs under this section, the local authority, EPA, or Minister must have regard to the following criteria:
  - (a) the sole purpose is to recover the reasonable costs incurred in respect of the matter to which the costs relate:
  - (b) the applicant should be required to pay for costs only to the extent that the benefit of the actions of the local authority, EPA, or Minister (as the case may be) to which the costs relate is obtained by the applicant as distinct from the community as a whole:
  - (c) the extent to which any activity by the applicant reduces the cost to the local authority, EPA, or Minister (as the case may be) of carrying out any of its functions, powers, and duties.
- (7) A person may object under section 357B to a requirement to pay costs under any of subsections (1) to (4).

Section 149ZD: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **149ZE Remuneration, allowances, and expenses of boards of inquiry**

The Fees and Travelling Allowances Act 1951 applies to a board of inquiry appointed under section 149J as follows:

- (a) the board is a statutory board within the meaning of the Act; and
- (b) a member of the board may be paid the following, out of money appropriated by Parliament for the purpose, if the Minister so directs:

- (i) remuneration by way of fees, salary, or allowances under the Act; and
- (ii) travelling allowances and travelling expenses under the Act for time spent travelling in the service of the board; and
- (c) the Act applies to payments under paragraph (b).

Section 149ZE: inserted, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## 150 Residual powers of authorities

*[Repealed]*

Section 150: repealed, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## 150AA Reference to Environment Court

*[Repealed]*

Section 150AA: repealed, on 1 October 2009, by section 100 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

# Part 6A

## Aquaculture moratorium

Part 6A: inserted, on 26 March 2002, by section 9 of the Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

## 150A Interpretation

In this Part, unless the context otherwise requires,—

**application** means an application for a coastal permit for aquaculture activities

**moratorium** means the period—

- (a) beginning on 28 November 2001; and
- (b) ending on the close of—
  - (i) 31 December 2004; or
  - (ii) in relation to a coastal marine area described in an order made under section 150C, the date specified in the order.

Section 150A: inserted, on 26 March 2002, by section 9 of the Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

Section 150A **moratorium** paragraph (b)(i): substituted, on 19 March 2004, by section 5 of the Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004 (2004 No 5).

### **150B Moratorium**

- (1) Subsection (2) applies to—
  - (a) an application that requires public notification if it was made to a consent authority before the moratorium and the consent authority had not, before the moratorium, notified the application:
  - (b) an application that does not require public notification if—
    - (i) it was made to a consent authority before the moratorium; and
    - (ii) the consent authority had not, before the moratorium, decided not to give limited notification of the application.
- (2) The consent authority must not process or determine the application until the moratorium has expired in relation to the area that the application relates to.
- (3) Subsection (4) applies if an application is made to a consent authority during the moratorium.
- (4) The consent authority—
  - (a) must not process the application; and
  - (b) must not determine the application; and
  - (c) must return the application, and any fee accompanying it, to the applicant as soon as practicable.
- (5) This section does not apply to an application if—
  - (a) the application relates to a coastal marine area that, immediately before the moratorium, was subject to—
    - (i) a coastal permit; or
    - (ii) a marine farming lease or licence under the Marine Farming Act 1971; and
  - (b) the application is for a new coastal permit for the same activities in the same area.

Section 150B: inserted, on 26 March 2002, by section 9 of the Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

Section 150B(1)(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 150B(1)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 150B(1)(b)(ii): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**150C Earlier expiry of moratorium in relation to specified areas**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Conservation, specify a date earlier than 31 December 2004 as the date on which the moratorium ends in relation to a coastal marine area described in the order.
- (2) The Minister must not make a recommendation unless—
  - (a) the regional council concerned has requested the Minister to make the recommendation; and
  - (b) the Minister is satisfied, based on information and explanations provided by the regional council, that—
    - (i) a regional coastal plan or proposed regional coastal plan provides for aquaculture activities as a controlled activity or discretionary activity in the area that the regional council's request relates to; and
    - (ii) the area is of a size and location that, taking into account the provisions of the plan or proposed plan, will avoid, remedy, or mitigate the adverse effects (including cumulative effects) of aquaculture activities on the environment and on other uses of the coastal marine area; and
    - (iii) the ending of the moratorium in relation to the area will not limit or adversely affect the establishment of aquaculture management areas in the future.
- (3) The Minister must make a recommendation under subsection (1) within 40 working days after receiving a request if the Minister is not prevented by subsection (2) from making the recommendation.
- (4) For the purposes of subsection (3), sections 37 and 37A apply, with all necessary modifications, as if the Minister were acting as a consent authority.

Section 150C: inserted, on 26 March 2002, by section 9 of the Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

Section 150C(1): amended, on 19 March 2004, by section 6(1) of the Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004 (2004 No 5).

Section 150C(3): amended, on 19 March 2004, by section 6(2) of the Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004 (2004 No 5).

Section 150C(4): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

### **150D Pending applications to be considered under rules as at end of moratorium**

*[Repealed]*

Section 150D: repealed, on 1 January 2005, by section 12 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### **150E Transitional provision**

*[Repealed]*

Section 150E: repealed, on 1 January 2005, by section 12 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### **150F No compensation**

No compensation is payable by the Crown to any person for any loss or damage arising from the application of this Part.

Section 150F: inserted, on 26 March 2002, by section 9 of the Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

### *Certain coastal permits continued*

Heading: inserted, on 19 March 2004, by section 7 of the Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004 (2004 No 5).

### **150G Certain coastal permits issued in period from 1 June 1995 to 1 August 2003 continued**

- (1) This section applies to coastal permits issued—
- (a) in the period beginning on 1 June 1995 and ending with the close of 1 August 2003; and
  - (b) for the occupation of an area in the coastal marine area for the purpose of aquaculture activities, and for any activity related to that occupation.

- (2) A coastal permit is given effect to when the holder of the permit applies under section 67J or section 67Q of the Fisheries Act 1983 to the chief executive of the Ministry of Fisheries for a marine farming permit or a spat catching permit over the same area.
- (3) A coastal permit that has lapsed under section 125 before 1 August 2003 is deemed not to have lapsed if, before the coastal permit lapsed under section 125, the holder of the coastal permit had applied under section 67J or section 67Q of the Fisheries Act 1983 to the chief executive of the Ministry of Fisheries for a marine farming permit or a spat catching permit over the same area.

Section 150G: inserted, on 19 March 2004, by section 7 of the Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004 (2004 No 5).

## Part 7 Coastal tendering

### 151AA Part not to apply to applications to occupy coastal marine area

This Part does not apply to applications for coastal permits to authorise the occupation of a coastal marine area.

Section 151AA: inserted, on 1 January 2005, by section 13 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### 151 Interpretation

In this Part, unless the context otherwise requires,—

**authorisation** means an authorisation granted by the Minister of Conservation pursuant to section 161

**Minister** means the Minister of Conservation

**Order in Council** means an Order in Council made under section 152

**public notice** means—

- (a) a notice published in 1 or more daily newspapers circulating in the main metropolitan areas; and
- (b) a notice published in—
  - (i) 1 or more daily newspapers circulating in the region to which any Order in Council relates; or

- (ii) 1 or more other newspapers that have at least an equivalent circulation in that region to the daily newspapers circulating in that region—

together with such other public notice (if any) as the person giving it thinks desirable in the circumstances.

**152 Order in Council may be made requiring holding of authorisation**

- (1) The Governor-General may, by Order in Council, on the advice of the Minister, direct that a consent authority must not grant a coastal permit, in respect of a specified part of the marine and coastal area (other than in respect of any specified freehold land) that would, if granted, authorise the permit holder—
  - (a) *[Repealed]*
  - (b) remove any sand, shingle, shell, or other natural material, within the meaning of section 12(4), from any such land; or
  - (c) reclaim or drain any of such land that is foreshore or seabed—unless the applicant for the coastal permit is the holder of an authorisation authorising such taking, removal, reclamation, or drainage.
- (2) Every Order in Council made under subsection (1) may, by Order in Council made on the advice of the Minister, be amended or revoked.
- (3) The Minister shall not advise the making of an Order in Council under subsection (1) or subsection (2) which relates to any activity described in subsection (1)(c) in the coastal marine area of any region until a proposed regional coastal plan has been both prepared and notified under this Act in respect of that region.
- (4) The Minister shall not advise the making of an Order in Council under subsection (1) or (2) unless the Minister considers that there is, or is likely to be, in respect of any area to which it is proposed that the Order in Council relate, competing demands for the use of that area for all or any of the activities referred to in subsection (1).



- (5) Every Order in Council made under subsection (1), and every Order in Council made under subsection (2) amending a previous Order in Council, shall expire on the second anniversary of the date on which—
- (a) in the case of an Order in Council made under subsection (1), it came into force:
  - (b) in the case of an Order in Council made under subsection (2), the original Order in Council amended came into force.

Section 152(1): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 152(1): amended, on 1 January 2005, by section 14(1)(b) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 152(1)(a): repealed, on 1 January 2005, by section 14(1)(a) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 152(1)(b): amended, on 7 July 1993, by section 80 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 152(3): amended, on 1 January 2005, by section 14(2) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 152(4): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

### **153 Application of Order in Council**

An Order in Council shall not apply to or affect—

- (a) any application for a coastal permit made before the date on which the Order in Council came into force:
- (b) any application, whether made before or after the date on which the Order in Council came into force, for a coastal permit to do something—
  - (i) that otherwise would contravene section 14, section 15, section 15A, or section 15B; or
  - (ii) that otherwise would contravene section 12 (other than something described in section 152(1)(b) or (c) that is the subject of the Order in Council):
- (c) any application to which any of sections 389, 390, 390A, 390C, 393, and 395 apply:
- (d) any application for a coastal permit to which section 124 applies and any coastal permit granted as a result of any such application:

- (e) any of the following in force or being carried out on the date on which the Order in Council came into force:
  - (i) any coastal permit:
  - (ii) any lease, licence, permit, Order in Council, or approval described in section 425:
  - (iii) any permitted activity in the coastal marine area:
  - (iv) any other lawful activity.

Section 153(b)(i): substituted, on 1 August 2003, by section 59 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 153(b)(ii): substituted, on 1 August 2003, by section 59 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 153(b)(ii): amended, on 1 January 2005, by section 15(1) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 153(c): amended, on 1 January 2005, by section 15(2) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 153(c): amended, on 7 July 1993, by section 81 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 153(d): substituted, on 17 December 1997, by section 33(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 153(e)(ii): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## 154 Publication, etc, of Order in Council

The Minister shall as soon as practicable—

- (a) cause a copy of every Order in Council to be served on the appropriate regional council; and
- (b) cause a notice of the making of the Order in Council and its effect to be served on—
  - (i) the Minister for the Environment:
  - (ii) *[Repealed]*
  - (iii) every territorial authority whose district or any part of whose district is situated within the region to which the Order in Council relates:
  - (iv) the tangata whenua of that region, through iwi authorities; and
- (c) cause public notice to be given of the making of the Order in Council and its effect.

Section 154(b)(ii): repealed, on 1 October 2009, by section 101 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 154(b)(iv): amended, on 10 August 2005, by section 84 of the Resource Management Amendment Act 2005 (2005 No 87).

**155 Particulars of Order in Council to be endorsed on regional coastal plan**

On receipt of a copy of an Order in Council under section 154, the regional council shall endorse particulars of it on the regional coastal plan or proposed regional coastal plan, but such endorsement shall not form part of the plan.

**156 Effect of Order in Council**

Except as otherwise provided in section 153, where an Order in Council is in force in respect of any part of the coastal marine area, a consent authority shall not grant a coastal permit to do any of the following in that part:

- (a) *[Repealed]*
- (b) remove any sand, shingle, shell, or other natural material, within the meaning of section 12(4), from any such land; or
- (c) reclaim or drain any of such land that is foreshore or seabed—

unless the applicant for that permit is the holder of an authorisation authorising such taking, removal, reclamation, or drainage, or unless that Order in Council does not require that any such authorisation be held.

Section 156: amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 156: amended, on 1 January 2005, by section 16(b) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 156(a): repealed, on 1 January 2005, by section 16(a) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 156(b): amended, on 7 July 1993, by section 82 of the Resource Management Amendment Act 1993 (1993 No 65).

**157 Calling of public tenders for authorisations**

- (1) Where an Order in Council is in force in respect of any part of the coastal marine area, the Minister may, from time to time and at any time, by public tender of which public notice has been given, offer authorisations for the whole or any portion

of that part in respect of all or any activities to which the Order in Council applies.

- (2) The public notice of every such offer shall—
  - (a) specify the range of activities to which the authorisation, once issued, will apply; and
  - (b) describe the area of land to which the authorisation, once issued, will apply, including the size, shape, and location of that area; and
  - (c) specify the closing date for tenders, which may be any date the Minister considers appropriate; and
  - (d) specify the manner in which tenders must be submitted.
- (3) Every such public notice may also specify—
  - (a) *[Repealed]*
  - (b) in the case of extraction, the maximum tonnage and period (not exceeding 35 years) of extraction;
  - (c) whether or not it is intended that the area will be re-tendered when the coastal permit to which it relates expires.
- (4) The Minister may amend, revoke, or replace any such notice before the time by which tenders must be received expires.

Section 157(3)(a): repealed, on 1 January 2005, by section 17 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### **158 Requirements of tender**

- (1) Every tender for an authorisation shall—
  - (a) specify the activity or range of activities in respect of which the authorisation is sought; and
  - (b) *[Repealed]*
  - (c) in respect of an activity to which section 152(1)(b) applies, the maximum period of any proposed coastal permit, and the maximum amount of material proposed to be extracted under the permit; and
  - (d) specify the total remuneration offered, including—
    - (i) any initial payment for the authorisation;
    - (ii) *[Repealed]*
    - (iii) any royalty for the extraction of material, and any proposed formula for adjustment of royalty.
- (1A) *[Repealed]*
- (2) Every such tender shall be accompanied by—

- (a) the prescribed fee (if any) and, if an initial payment for the authorisation is offered, a cash deposit of that payment or equivalent security to the satisfaction of the Minister; and
- (b) any additional information specified in the public notice calling for tenders.

Section 158(1)(b): repealed, on 1 January 2005, by section 18 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 158(1)(d)(ii): repealed, on 1 January 2005, by section 18 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 158(1A): repealed, on 1 January 2005, by section 18 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

## **159 Acceptance of tender, etc**

- (1) After having regard to—
  - (a) the interests (including the financial interests) of the Crown in the coastal marine area; and
  - (b) the financial and other circumstances of the tenderers; and
  - (c) any other matters the Minister considers relevant—the Minister may in the Minister’s discretion—
  - (d) accept any tender, whether or not it is the highest tender; or
  - (e) enter into private negotiations with any tenderer, whether or not that tenderer offered the highest tender, with a view to reaching an agreement; or
  - (f) reject all tenders and call for new tenders under section 157.
- (2) On making a decision to accept a tender or to reject all tenders, the Minister shall forthwith give written notification of the decision and the reasons for it to the appropriate regional council and every tenderer.
- (3) When giving notification under subsection (2) of the decision to accept a tender, the Minister shall include in the notification details of the name of the successful tenderer and the nature of the activity to which the tender relates.
- (4) If the Minister reaches an agreement with a tenderer pursuant to subsection (1)(e), the Minister shall forthwith give written notification to the appropriate regional council and every other

tenderer of the name of the person with whom agreement was reached and the nature of the activity to which the agreement relates.

**160 Notice of acceptance of tender**

- (1) Every tender accepted in accordance with section 159 shall be by written notice of acceptance given by the Minister to the successful tenderer.
- (2) At the same time as giving any written notice of acceptance under subsection (1), the Minister shall also give written notice to every other tenderer of the failure of their tender and, on request, shall return all documents submitted with each unsuccessful tender.

**161 Grant of authorisation**

- (1) Where the Minister gives notice of acceptance of a tender under section 160 or enters into an agreement satisfactory to the Minister under section 159(1)(e), the Minister shall grant a written authorisation, in such form as he or she thinks appropriate, to the successful tenderer or the person with whom the agreement was entered into, as the case may be.
- (2) The Minister shall cause a copy of every such authorisation to be given to the appropriate regional council.

**162 Authorisation not to confer right to coastal permit, etc**

- (1) The granting of an authorisation under section 161 shall not confer any right to the grant of a coastal permit in respect of the area to which the authorisation relates.
- (2) If a coastal permit is granted to the holder of an authorisation in respect of an area to which the authorisation relates, that permit—
  - (a) in the case of an activity to which section 152(1)(b) applies,—
    - (i) must not be granted for a period greater than the period specified in the authorisation; and
    - (ii) must not authorise the removal of any material at a rate, or of a total quantity, greater than that specified in the authorisation; and

(b) is subject to section 112.

(c) *[Repealed]*

Section 162(2)(a): substituted, on 1 January 2005, by section 19 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 162(2)(b): substituted, on 1 January 2005, by section 19 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 162(2)(c): repealed, on 1 January 2005, by section 19 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### **163 Authorisation transferable**

Every authorisation may be transferred by its holder to any other person, but the transfer shall not take effect until written notice of it has been given to and received by the Minister and the appropriate regional council.

### **164 Authorisation to lapse in certain circumstances**

(1) Subject to subsection (2), an authorisation shall lapse unless, within 2 years after it was granted, its holder has obtained a coastal permit which includes conditions authorising the holder to undertake the activity and (if relevant) occupy the area in respect of which the authorisation was granted.

(2) Where—

(a) before the second anniversary of the date an authorisation is granted, its holder has applied for a coastal permit in respect of the activity to which the authorisation relates; and

(b) on that second anniversary date—

(i) no decision has been made by the consent authority on that application; or

(ii) the consent authority has made a decision, but the time for lodging appeals to the Environment Court has not expired, or an appeal has been lodged but no decision has been made by the court on that appeal—

the authorisation shall not lapse until the time for lodging an appeal in respect of the decision has expired, or the decision of the court in respect of any appeal has been given.

Section 164(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 164(2)(b)(ii): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **165 Tender money**

- (1) Where a person to whom an authorisation has been granted forwarded an initial payment to the Minister pursuant to section 158(2), the money shall be the property of the Crown, and, on granting the authorisation, the Minister shall cause that money to be paid into a Crown Bank Account in accordance with the Public Finance Act 1989.
- (2) Where an authorisation granted to a person to whom subsection (1) applies has lapsed pursuant to section 164, the Minister shall cause 80% of the initial payment to be refunded to that person from a Crown Bank Account.
- (3) Where any tenderer who has failed to obtain an authorisation forwarded an initial payment to the Minister pursuant to section 158(2), the Minister shall as soon as practicable cause that money to be refunded to that tenderer.

Section 165(1): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Section 165(2): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

## **Part 7A**

### **Occupation of coastal marine area**

Part 7A: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

#### **Subpart 1—Aquaculture management areas and authorisations**

Subpart 1: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### **165A Interpretation**

In this subpart and subpart 2, unless the context otherwise requires,—

**aquaculture agreement** has the same meaning as in section 186ZD of the Fisheries Act 1996



**authorisation** means the right to apply for a coastal permit to occupy space in a coastal marine area

**available space**, in relation to an aquaculture management area,—

- (a) means space vested in the Crown or a regional council that is not the subject of—
  - (i) a coastal permit to occupy space in a coastal marine area for aquaculture activities; or
  - (ii) an authorisation; or
  - (iii) a deemed coastal permit under the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 that authorises occupation of the space; or
  - (iv) an application for a coastal permit to occupy space in a coastal marine area for aquaculture activities; or
  - (v) a lease or licence under the Marine Farming Act 1971 until the lease or licence becomes a deemed coastal permit under section 10 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or
  - (vi) a coastal permit to occupy space in an aquaculture management area for activities that are not aquaculture activities if the activities authorised by the coastal permit are not compatible with aquaculture activities; and
- (b) does not include an actual space (as defined in section 53(12) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004)

**chief executive** means the chief executive of the Ministry of Fisheries

**Minister** means the Minister of Conservation

**public notice** has the same meaning as in section 151

**trustee** has the same meaning as in section 4 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

Section 165A: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165A **available space** paragraph (a)(vi): substituted, on 28 September 2008, by section 8 of the Resource Management Amendment Act 2008 (2008 No 95).

### **165AB Establishment of aquaculture management areas**

An area may be established as an aquaculture management area only in the following ways:

- (a) by being included in a regional coastal plan or proposed regional coastal plan in accordance with section 165C:
- (b) by becoming an aquaculture management area under section 44 or 45 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

Section 165AB: inserted, on 28 September 2008, by section 9 of the Resource Management Amendment Act 2008 (2008 No 95).

### **165B Power of consent authorities to refuse to receive applications for coastal permits**

For the purposes of this subpart, a consent authority may refuse to receive an application for a coastal permit for activities within 1 year after a consent authority has refused to grant an application for a permit for an activity of the same or a similar type in respect of the same space or in respect of space in close proximity to the space concerned.

Section 165B: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### **165BB Some applications for coastal permits must be cancelled**

A consent authority must cancel an application for a coastal permit for the occupation of space in the coastal marine area for the purpose of aquaculture activities if the application—

- (a) is made after 9 May 2006 but before the commencement of the Resource Management Amendment Act 2008; and
- (b) does not relate to an aquaculture management area in a regional coastal plan as at the commencement of the Resource Management Amendment Act 2008.

Section 165BB: inserted, on 28 September 2008, by section 10 of the Resource Management Amendment Act 2008 (2008 No 95).

**165BC Certain applications not to be processed or determined until aquaculture management area established in regional coastal plan**

- (1) This section applies to applications for coastal permits for the occupation of space in the coastal marine area for the purpose of aquaculture activities made on or after 1 January 2005 but before 10 May 2006, being applications that (at the time of being made) did not relate to an aquaculture management area in a regional coastal plan.
- (2) A consent authority must not process or determine an application until such time as the area to which the application relates becomes an aquaculture management area in a regional coastal plan.
- (3) An application referred to in subsection (2) must be processed and determined under the rules in the regional coastal plan and any proposed regional coastal plan at the time the consent authority resumes processing the application.
- (4) However, a consent authority must not grant a coastal permit to occupy space for aquaculture activities in an aquaculture management area that is subject to a reservation relating to commercial fishing, except to a person specified in a notice given by the chief executive under section 186ZK of the Fisheries Act 1996 as the holder of an aquaculture agreement under that Act.
- (5) An application is deemed to be cancelled on and from the date on which a proposed regional coastal plan is notified under clause 5 of Schedule 1 after the commencement of the Resource Management Amendment Act 2008 and to the extent that the application relates to an area covered by the plan and the plan provides for an aquaculture management area, but it does not include the area that the application relates to.
- (6) An application is deemed to be cancelled on and from the day that is 10 years after the commencement of the Resource Management Amendment Act 2008 to the extent that, by that date,—
  - (a) no proposed regional coastal plan covering the area that the application relates to has been notified under clause 5 of Schedule 1; or

- (b) a proposed regional coastal plan covering the area that the application relates to has been notified under clause 5 of Schedule 1, but the plan contains no aquaculture management areas.
- (7) This section—
  - (a) prevails over Part 7A; but
  - (b) applies subject to the Maori Commercial Aquaculture Claims Settlement Act 2004.

Section 165BC: inserted, on 28 September 2008, by section 10 of the Resource Management Amendment Act 2008 (2008 No 95).

*Aquaculture management areas and occupation  
of coastal marine area*

Heading: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165C Provisions about aquaculture management areas**

- (1) A regional coastal plan or proposed regional coastal plan—
  - (a) may provide for 1 or more aquaculture management areas in a coastal marine area; and
  - (b) may provide for 1 or more aquaculture management areas in a coastal marine area for the express purpose of providing for the allocation of space to the trustee under section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004; and
  - (c) in relation to an aquaculture management area, may—
    - (i) specify the aquaculture activities that may be undertaken; and
    - (ii) specify other activities involving occupation that may be undertaken; and
    - (iii) specify that no application (other than under an authorisation) can be made for a coastal permit to occupy space in an aquaculture management area before a date to be specified in a public notice; and
    - (iv) provide that the consent authority may process and hear together applications for coastal permits for the occupation of—
      - (A) the same space in a coastal marine area; or

- (B) different spaces in a coastal marine area that are in close proximity to each other; and
  - (v) specify limits on—
    - (A) the character, intensity, or scale of activities associated with occupation of space or the aquaculture management area generally; and
    - (B) the size of space that may be the subject of a coastal permit granted for the purposes of section 12(2) and the proportion of an aquaculture management area that may be occupied for the purpose of specified activities; and
  - (vi) provide for the management of competition for the occupation of space vested in the Crown or a regional council in an aquaculture management area.
- (2) A regional coastal plan or proposed regional coastal plan that provides for an aquaculture management area must include provisions to ensure that an aquaculture management area is principally for aquaculture activities.
- (3) A regional coastal plan or proposed regional coastal plan that provides for an aquaculture management area under subsection (1)(b) must provide that authorisations are to be allocated to the trustee only when and to the extent required by section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004.
- (4) A regional coastal plan or proposed regional coastal plan that provides for aquaculture management areas must be prepared in the manner set out in Schedule 1A.
- (5) *[Repealed]*

Section 165C: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165C(5): repealed, on 28 September 2008, by section 11 of the Resource Management Amendment Act 2008 (2008 No 95).

**165D Provisions about occupation of coastal marine area**

- (1) This section applies only in relation to areas in a coastal marine area that are not aquaculture management areas.
- (2) A regional coastal plan or proposed regional coastal plan may include provisions to address the effects of occupation of a coastal marine area and to manage competition for the occupation of space, including rules specifying—
  - (a) that no application can be made for a coastal permit to occupy space before a date to be specified in a public notice;
  - (b) that the consent authority may process and hear together applications for coastal permits for the occupation of—
    - (i) the same space in a coastal marine area; or
    - (ii) different spaces in a coastal marine area that are in close proximity to each other;
  - (c) limits on—
    - (i) the character, intensity, or scale of activities associated with the occupation of space;
    - (ii) the size of space that may be the subject of a coastal permit and the proportion of any space that may be occupied for the purpose of specified activities.
- (3) However, a rule made for the purposes of subsection (2)(a) does not apply to an application made for a coastal permit under an authorisation.

Section 165D: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

*Allocation of space in coastal marine area*

Heading: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165E Offer of authorisations for available space in aquaculture management area**

- (1) If a regional coastal plan provides for an aquaculture management area, the regional council may, by public notice, offer authorisations for available space in the area for 1 or more aquaculture activities for which the area may be occupied—
  - (a) by public tender, if paragraph (b) does not apply; or

- (b) by another method, if the plan provides for allocation by another method.
- (2) Subsection (1) applies subject to section 165O.
- (3) A regional council must not offer authorisations for available space in an aquaculture management area (for activities that are not aquaculture activities) by public tender or another method unless the regional coastal plan provides for the allocation of authorisations for available space by public tender or the other method.

Section 165E: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165F Offer of authorisations for activities other than aquaculture activities**

A regional council may, by public notice and in accordance with its regional coastal plan, offer authorisations for coastal permits for the occupation of space in the coastal marine area for activities other than aquaculture activities.

Section 165F: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165G Chief executive to be notified of proposed allocation**

- (1) This section applies only in relation to space that is the subject of a reservation relating to commercial fishing.
- (2) A regional council must give the chief executive not less than 6 months' notice of—
  - (a) an offer of authorisations under section 165E;
  - (b) the date on and from which applications for coastal permits for the occupation of space for aquaculture activities may be made in accordance with the regional coastal plan or this Act;
  - (c) the operative date of the regional coastal plan or a change to a regional coastal plan that provides for an aquaculture management area.
- (3) A regional council must also give not less than 6 months' public notice of the matters referred to in subsection (2)(a) to (c).

Section 165G: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165H Plan may specify allocation methods**

A regional coastal plan or proposed regional coastal plan may provide for a rule in relation to a method of allocating space in the common marine and coastal area.

Section 165H: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165H: amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 165H: amended, on 10 August 2005, by section 85 of the Resource Management Amendment Act 2005 (2005 No 87).

**165I Duty to adopt most efficient and effective allocation mechanism**

- (1) Before adopting a rule in relation to the method of allocation of space in a coastal marine area, other than as provided for in this Act, a regional council must—
  - (a) have regard to—
    - (i) the reasons for and against adopting the proposed method; and
    - (ii) the principal alternative means available; and
  - (b) be satisfied that the adoption of the proposed method is—
    - (i) necessary in the circumstances of the region; and
    - (ii) the most appropriate for allocation in the circumstances of the region, having regard to its efficiency and effectiveness compared with other methods.
- (2) Section 32(1) to (3) does not apply to the adoption of a rule in accordance with subsection (1).
- (3) Subsection (1) applies subject to an Order in Council made under section 165O.

Section 165I: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165J Allocation of space in aquaculture management area for aquaculture activities subject to reservation relating to commercial fishing**

- (1) This section applies to an aquaculture management area to the extent that the area is subject to a reservation relating to commercial fishing.



- (2) A regional council must not allocate authorisations relating to aquaculture activities in an area subject to a reservation, except to a person specified in a notice given by the chief executive under section 186ZK of the Fisheries Act 1996 as the holder of an aquaculture agreement under that Act relating to the area.
- (3) No person may apply for or be granted a coastal permit to occupy space for aquaculture activities in an aquaculture management area that is subject to a reservation in relation to commercial fishing, except a person specified in a notice given by the chief executive under section 186ZK of the Fisheries Act 1996 as the holder of an aquaculture agreement under that Act.
- (4) Before allocating an authorisation referred to in subsection (2), the regional council must have received advice from the chief executive that—
  - (a) the time for registering aquaculture agreements has expired; and
  - (b) at least 1 aquaculture agreement has been registered.
- (5) If a coastal permit is granted for the area that is subject to the reservation, the regional council must delete from the regional coastal plan the reservation in relation to the area to which the coastal permit relates.
- (6) If the chief executive advises the regional council that no aquaculture agreement has been registered in respect of the area or part of the area, the regional council must amend its regional coastal plan by deleting the area or part of the area from the aquaculture management area.
- (7) If an authorisation lapses under section 165N and the holder of the authorisation does not hold a coastal permit granted under it, the regional council must amend its regional coastal plan by deleting the area from the aquaculture management area.
- (8) Schedule 1 and Schedule 1A do not apply to an amendment made under any of subsections (5), (6), or (7).
- (9) This section applies subject to section 14 of the Maori Commercial Aquaculture Claims Settlement Act 2004.

Section 165J: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165K When applications not to be made or granted unless applicant holds authorisation**

- (1) Subsection (2) applies to space in the coastal marine area if—
  - (a) the space is available space and a regional coastal plan does not provide for the allocation of the space by an alternative to an offer of authorisations; or
  - (b) the space has been identified by a regional council as space for allocation to the trustee under section 9(1) of the Maori Commercial Aquaculture Claims Settlement Act 2004.
- (2) A person must not apply for, and a consent authority must not grant, a coastal permit authorising occupation of the space or identified space (as the case may be) for aquaculture activities unless the person is the holder of an authorisation for the space.
- (3) Subsection (4) applies to space in a coastal marine area and the regional coastal plan provides for the allocation of authorisations of space by public tender or another method.
- (4) A person must not apply for, and a regional council must not grant, a coastal permit authorising occupation of the space for activities that are not aquaculture activities unless the person is a holder of an authorisation for the space.

Section 165K: substituted, on 28 September 2008, by section 12 of the Resource Management Amendment Act 2008 (2008 No 95).

**165L Authorisation not to confer right to coastal permit**

- (1) The granting of an authorisation does not confer any right to the grant of a coastal permit in respect of the space that the authorisation relates to.
- (2) However, if a coastal permit is granted to the holder of an authorisation, the permit must not be granted for a period greater than the period specified in the authorisation.

Section 165L: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165M Authorisation transferable**

An authorisation or any part of it may be transferred by its holder to any other person, but the transfer does not take effect until written notice of it has been received by the regional council concerned.

Section 165M: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165N Authorisation lapses in certain circumstances**

- (1) An authorisation lapses at the close of 2 years after the day on which it is granted unless subsection (3) applies.
- (2) Subsection (3) applies if,—
  - (a) before the second anniversary of the date on which an authorisation is granted, its holder has applied for a coastal permit in respect of the activity that the authorisation relates to; and
  - (b) on the second anniversary date—
    - (i) no decision has been made by the consent authority on the application; or
    - (ii) the consent authority has made a decision, but the time for lodging appeals to the Environment Court has not expired, or an appeal has been lodged but no decision has been made by the court on the appeal.
- (3) The authorisation does not lapse until—
  - (a) the time for lodging an appeal in respect of the decision has expired and no appeal has been lodged; or
  - (b) an appeal has been lodged and the court has given its decision on the appeal.

Section 165N: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165O Power of Minister of Conservation to give directions relating to allocation of space**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, direct a regional council—
  - (a) not to proceed with a proposed allocation of space in a coastal marine area; or
  - (b) in proceeding with a proposed allocation of space in a coastal marine area, to give effect to the matters specified in the Order in Council.
- (2) The Minister may make a recommendation under subsection (1) only for either or both of the following purposes:

- (a) to give effect to government policy in the coastal marine area:
  - (b) to preserve the ability of the Crown to give effect to any of its obligations under any agreement in principle or deed of settlement between the Crown and any group of Maori claimants or representative of any group of Maori claimants in relation to a claim arising from, or relating to, any act or omission by or on behalf of the Crown or by or under any enactment before 21 September 1992.
- (3) The matters referred to in subsection (1)(b) include—
  - (a) the allocation method to be used:
  - (b) the maximum term of a coastal permit available for allocation:
  - (c) the allocation of authorisations relating to specific spaces within a coastal marine area to the Crown.
- (4) If an Order in Council contains a direction under subsection (3)(a), the Order must be made before—
  - (a) the relevant proposed plan is notified under clause 5 or clause 26 of Schedule 1; or
  - (b) the Minister approves the relevant regional coastal plan under clause 19 of Schedule 1.
- (5) If an Order in Council contains a direction under subsection (3)(b) or (c), the Order must be made before the regional council publicly notifies the offer under section 165E(1) or section 165F.
- (6) A regional council must give the Minister of Conservation not less than 4 months' notice of an offer of authorisations under section 165E or section 165F.
- (7) The Minister must not make a recommendation except within 3 months after receiving notification from the regional council under subsection (6).
- (8) The Order in Council does not affect any allocation of authorisations advertised or a plan approved under clause 19 of Schedule 1 or an application for a coastal permit made before the Order in Council comes into force.

Section 165O: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

*Allocation by offer of authorisations*

Heading: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165P Public notice of offer of authorisations**

- (1) A notice given under section 165E(1) or section 165F must—
  - (a) specify the range of activities that the authorisation will apply to after it is issued; and
  - (b) describe the space in the coastal marine area that the authorisation will apply to after it is issued, including the size, shape, and location of the space; and
  - (c) specify the maximum term of the coastal permit; and
  - (d) note whether or not the space is subject to a reservation relating to commercial fishing and, if so, the details of the reservation; and
  - (e) if the space is subject to a reservation relating to commercial fishing, note that only a person who holds a registered aquaculture agreement as specified in a notice given by the chief executive under section 186ZK of the Fisheries Act 1996 may be granted the authorisation; and
  - (f) specify the closing date for offers; and
  - (g) specify the criteria that the regional council will apply in selecting the successful offer; and
  - (h) include details of any direction given under section 165O in relation to the offer; and
  - (i) specify the manner in which offers must be submitted; and
  - (j) specify any charge payable under section 36(1)(ca); and
  - (k) specify any other matter that the regional council considers appropriate in the circumstances.
- (2) If an offer of authorisations is to be by tender, the notice must also—
  - (a) specify the form of remuneration required, whether all by advance payment, or by deposit and annual rental payments; and
  - (b) specify whether or not there is a reserve price.
- (3) This section applies subject to an Order in Council made under section 165O.

Section 165P: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165P(1)(j): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **165Q Requirements for offers**

- (1) An offer for an authorisation must specify—
  - (a) the activity or range of activities in respect of which the authorisation is sought; and
  - (b) the site it applies to.
- (2) In the case of a tender for authorisations, the tender must also specify—
  - (a) the total remuneration offered (including any annual rental component); and
  - (b) the form of payment of the remuneration.
- (3) A tender must be accompanied by—
  - (a) a cash deposit (being payment in advance of part of the remuneration) or equivalent security to the satisfaction of the regional council; and
  - (b) any additional information specified in the notice calling for tenders.
- (4) An offer or a tender must be accompanied by any charge payable under section 36(1)(ca).
- (5) If a tender is accepted under section 165S, the amount of any annual rental component of the remuneration payable under subsection (2) must be reduced by the amount of any coastal occupation charges payable under section 64A for the occupation of the area concerned.

Section 165Q: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165Q(4): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **165R Preferential rights of iwi**

- (1) In conducting a tender of authorisations under this Part, a regional council must give effect to any preferential right to purchase a proportion of the authorisations.
- (2) Subsection (1) applies to preferential rights conferred by—

- (a) section 316 of the Ngāi Tahu Claims Settlement Act 1998;
  - (b) section 119 of the Ngati Ruanui Claims Settlement Act 2003;
  - (c) section 79 of the Ngati Tama Claims Settlement Act 2003;
  - (d) section 106 of the Ngaa Rauru Kiitahi Claims Settlement Act 2005;
  - (e) section 118 of the Ngāti Awa Claims Settlement Act 2005;
  - (f) section 92 of the Ngāti Mutunga Claims Settlement Act 2006.
- (3) For the purposes of subsection (1), provisions in the Acts referred to in subsection (2) relating to a preferential right that contain references to the Minister of Conservation apply as if the references were to the regional council.
- (4) This section applies subject to section 165J.

Section 165R: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165R(2)(d): added, on 28 June 2005, by section 112 of the Ngaa Rauru Kiitahi Claims Settlement Act 2005 (2005 No 84).

Section 165R(2)(e): added, on 10 August 2005, by section 86 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 165R(2)(f): added, on 22 November 2006, by section 98 of the Ngāti Mutunga Claims Settlement Act 2006 (2006 No 61).

### **165S Acceptance of offer**

- (1) After considering the offers in accordance with the criteria specified under section 165P, the regional council may—
- (a) accept any offer; or
  - (b) reject all offers; or
  - (c) reject all offers and call for new offers; or
  - (d) negotiate with any person who made an offer with a view to reaching an agreement.
- (2) If the offer is a tender, the regional council may accept any tender or negotiate with any tenderer, whether or not the tender was the highest received.
- (3) As soon as practicable after deciding to accept an offer or to reject all offers or after reaching an agreement, the regional

council must give written notice of the decision and the reasons for it to every person who made an offer.

- (4) If an offer is accepted or an agreement is reached, the notice under subsection (3) must include details of the name of the person who made the offer and the nature of the activity that the offer or agreement relates to.

Section 165S: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165S(4): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **165T Grant of authorisation**

If the regional council accepts an offer or reaches an agreement with a person who made an offer under section 165S, the regional council must grant an authorisation to the person concerned.

Section 165T: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

#### **165U Tender money**

- (1) If the holder of an authorisation obtains a coastal permit authorising the holder to undertake an activity in respect of which the authorisation was granted, the regional council must forward to the Minister 50% of the remuneration received under the tender.
- (2) The Minister must cause the money to be paid into a Crown Bank Account in accordance with the Public Finance Act 1989.
- (3) If an authorisation granted to a successful tenderer has lapsed under section 165N, the regional council must, as soon as possible, refund the remuneration to the tenderer.
- (4) If a tenderer who has failed to obtain an authorisation forwarded a payment to the regional council under section 165Q(3), the regional council must, as soon as possible, refund the payment to the tenderer.
- (5) This section applies subject to section 26 of the Maori Commercial Aquaculture Claims Settlement Act 2004.



Section 165U: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165U(2): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

### **165V Use of tender money**

The regional council must apply its share of the remuneration to achieving the purpose of this Act in the coastal marine area in its region.

Section 165V: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### **Subpart 2—Privately initiated plan changes**

Subpart 2: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### **165W Excluded areas**

- (1) A regional council may, by public notice, identify areas in the coastal marine area in its region as excluded areas.
- (2) Before identifying an excluded area, the regional council must comply with the consultative requirements in clauses 3 to 3B of Schedule 1, and those clauses apply, with all necessary modifications, as if a proposal to identify an excluded area were a proposed plan.
- (3) To avoid doubt, any consultation under subsection (2) does not constitute a request for an aquaculture decision under section 186D of the Fisheries Act 1996.

Section 165W: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165W(2): amended, on 10 August 2005, by section 87 of the Resource Management Amendment Act 2005 (2005 No 87).

### **165X Aquaculture management areas may not be established in excluded areas as result of requests for changes**

A regional council must not seek nor accept, under this subpart, a request for a change to a regional coastal plan or proposed regional coastal plan from a person wishing to undertake aquaculture activities in any part of the coastal marine area that is an excluded area.

Section 165X: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165Y Request for change may be made only in response to regional council seeking requests**

A person may not make a request for change under this subpart except in response to a regional council seeking requests under section 165Z.

Section 165Y: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165Z Invitation to request change to regional coastal plan or proposed regional coastal plan**

- (1) A regional council may, by public notice, invite any person to request a change to a regional coastal plan or a proposed regional coastal plan to establish an aquaculture management area.
- (1A) A regional council may give an invitation under subsection (1) only if all the following apply:
  - (a) the council has complied under section 165W with the consultation requirements of clauses 3 to 3B of Schedule 1; and
  - (b) the council has decided whether or not 1 or more excluded areas should be identified in the part of the coastal marine area covered by the invitation; and
  - (c) if the council has decided that 1 or more excluded areas should be identified, it has identified the areas.
- (2) Part 2 of Schedule 1 and Schedule 1A apply to a request made in response to an invitation under subsection (1) except to the extent modified by sections 165ZA to 165ZF.
- (3) If the request relates to a proposed regional coastal plan, then Part 2 of Schedule 1 and Schedule 1A apply as if references to a plan were references to a proposed plan.
- (4) For the purpose of carrying out its functions under subsection (1) and clause 25(1) of Schedule 1, the regional council must establish a process that is fair and reasonable in the circumstances.

Section 165Z: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165Z(1A): inserted, on 10 August 2005, by section 88 of the Resource Management Amendment Act 2005 (2005 No 87).

**165ZA Adoption of request or part of request for change, and combining requests**

- (1) When considering a request under clause 25 of Schedule 1, the regional council may adopt a request or part of a request under clause 25(2)(a) of Schedule 1 and combine it with any other request or part of a request for a change to a plan or proposed plan to establish an aquaculture management area if, in the council's opinion, combining requests is likely to assist the council—
  - (a) in allocating space of an economic size to the trustee under section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004; or
  - (b) to address more effectively the cumulative effects of aquaculture activities in the areas the requests relate to; or
  - (c) in planning more effectively for aquaculture activities.
- (2) A regional council may amend a request adopted under subsection (1) by increasing the amount of available space provided for in the part of the region the request relates to.
- (3) If the regional council adopts a request and combines it with any other request or amends the request under subsection (2),—
  - (a) the council must specify that part of the available space in the aquaculture management area out of which a person who requested a change is to receive an authorisation under section 165ZF, being 80% of the available space requested by the person; and
  - (b) the council may fix a charge under section 36(1)(a) payable by each person who requested a change recognising the proportion of the available space to which the person's request relates.

Section 165ZA: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165ZA(3)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**165ZB Acceptance of request or part of request for change**

- (1) If the regional council accepts the request under clause 25(2)(b) of Schedule 1, the council must specify that the person or persons who requested the change are to receive an authorisation under section 165ZF for 80% of the available space in the aquaculture management area.
- (2) Schedule 1A applies to a request adopted and combined with another request under section 165ZA and clause 25(2)(a) of Schedule 1 or accepted under clause 25(2)(b) as if the reference to the regional council in clause 2 of Schedule 1A were a reference to the person who requested the change.
- (3) Sections 186D and 186E of the Fisheries Act 1996 apply to a request adopted and combined with another request under section 165ZA and clause 25(2)(a) of Schedule 1 or accepted under clause 25(2)(b) of Schedule 1 as if the reference to the regional council were a reference to the person who requested the change.

Section 165ZB: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165ZC Regional council to notify chief executive of acceptance or adoption of request**

As soon as practicable after accepting or adopting a request under clause 25 of Schedule 1, the regional council must notify the chief executive of—

- (a) the name of the person who requested the change; and
- (b) a description of the space that the request relates to.

Section 165ZC: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165ZD Notification of change**

When a change is notified under clause 5 or clause 26 of Schedule 1, the regional council must also include in the notice—

- (a) the name of the person who requested the change; and
- (b) a description of the space in the aquaculture management area out of which the person who requested the change is to receive an authorisation under section

165ZF, being 80% of the available space requested by the person.

Section 165ZD: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

#### **165ZE Rejection of request for change**

The regional council may reject a request for a change if—

- (a) clause 25(4)(a), (b), (c), or (d) of Schedule 1 applies; or
- (b) the regional council is preparing a change to establish an aquaculture management area in the same area of its region; or
- (c) more than 1 person has requested a change to establish an aquaculture management area in the same area of the region and the council has adopted another request.

Section 165ZE: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

#### **165ZF Allocation of authorisations from privately initiated changes**

- (1) This section applies if an aquaculture management area has been included in a regional coastal plan or proposed regional coastal plan as a result of a request for a change made in response to an invitation under section 165Z(1).
- (2) The regional council must comply with section 9 of the Maori Commercial Aquaculture Claims Settlement Act 2004 before allocating any other authorisations in the aquaculture management area.
- (3) As soon as practicable after complying with subsection (2), the regional council must—
  - (a) allocate authorisations for the remaining space to the person who requested the change in response to an invitation under section 165Z(1); and
  - (b) publicly notify the allocation.
- (4) To avoid doubt, section 165J(1), (3), and (5) to (9) and sections 165K to 165O apply to available space in an aquaculture management area established as a result of a request made in response to an invitation under section 165Z(1).

Section 165ZF: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### Subpart 3—Order in which applications by existing consent holders are to be processed

Subpart 3: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

#### 165ZG Application

- (1) This subpart applies—
  - (a) only to applications and coastal permits for aquaculture activities, that relate to an aquaculture management area; and
  - (b) in relation to such applications made on or after 23 August 2004.
- (2) However, this subpart does not apply to an application if the relevant plan provides for a method of allocating space used for aquaculture activities at the time of an application for resource consent for aquaculture activities.

Section 165ZG: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

#### 165ZH Processing applications for existing permit holders

- (1) This section applies if—
  - (a) a person holds—
    - (i) a deemed coastal permit under section 10 or 20 or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or
    - (ii) a coastal permit to occupy space for the purpose of aquaculture activities, granted after the commencement of this Part; and
  - (b) the permit referred to in paragraph (a)(i) or paragraph (a)(ii)—
    - (i) is in force at the time of any application under subsection (2); and
    - (ii) applies in relation to an area located in an aquaculture management area.
- (2) If the holder of a permit (**existing permit holder**) makes an application for a coastal permit and complies with section 124, then—

- (a) the application must be processed and determined before any other application for a coastal permit for the space that the permit applies to; and
- (b) no other application may be accepted for the space that the application relates to before the determination of the application.

Section 165ZH: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165ZI Applications for space already used for aquaculture activities**

- (1) This section applies to an application for a coastal permit to carry out aquaculture activities if—
  - (a) the application relates to space that is subject to a permit referred to in section 165ZH; and
  - (b) the application is made by a person who is not the existing permit holder.
- (2) The application must be held by the consent authority without processing until 3 months before the expiry of the permit.
- (3) While the application is being held under subsection (2), the consent authority must not accept any other applications by persons other than the existing permit holder for that space until after the application being held under subsection (2) is determined or has lapsed.
- (4) After receiving an application referred to in subsection (1), the council must notify the existing permit holder—
  - (a) of the application; and
  - (b) that the holder can make an application in accordance with section 124.
- (5) If an application to which section 165ZH(2) applies is made in accordance with section 124, then the application referred to in subsection (1) remains on hold until that application is determined.
- (6) If the application to which section 165ZH(2) applies is granted, then the application referred to in subsection (1) lapses.
- (7) If no application to which section 165ZH(2) applies is made prior to the date 3 months before expiry of the relevant permit,

then the application being held under subsection (2) must be processed and determined in accordance with this Act.

- (8) However, the application may be processed and determined before the expiry of the 3-month period referred to in subsection (7) if the existing permit holder notifies the consent authority in writing that the holder does not propose to make an application under section 124.

Section 165ZI: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**165ZJ Additional criteria for considering applications for permits for space already used for aquaculture activities**

- (1) When considering an application to which section 165ZH(2) or section 165ZI(7) or (8) applies, a consent authority must not only consider the relevant matters under this Act, but also consider the applicant's conduct in relation to—
- (a) compliance with the relevant regional coastal plan; and
  - (b) compliance with resource consent conditions for current or previous aquaculture activities undertaken by the applicant; and
  - (c) the use of current industry good practice for any current aquaculture activities.
- (2) In making an assessment under subsection (1)(a) and (b), the council must, in relation to any successful enforcement action under Part 12, consider—
- (a) the number of any breaches that have occurred; and
  - (b) the seriousness of the breach; and
  - (c) how recently the breach occurred; and
  - (d) the subsequent behaviour of the applicant after enforcement action.

Section 165ZJ: inserted, on 1 January 2005, by section 20 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).



## Part 8 Designations and heritage orders

### *Designations*

#### 166 **Meaning of designation, network utility operator, and requiring authority**

In this Act—

**designation** means a provision made in a district plan to give effect to a requirement made by a requiring authority under section 168 or section 168A or clause 4 of Schedule 1

**network utility operator** means a person who—

- (a) undertakes or proposes to undertake the distribution or transmission by pipeline of natural or manufactured gas, petroleum, biofuel, or geothermal energy; or
- (b) operates or proposes to operate a network for the purpose of—
  - (i) telecommunication as defined in section 5 of the Telecommunications Act 2001; or
  - (ii) radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989; or
- (c) is an electricity operator or electricity distributor as defined in section 2 of the Electricity Act 1992 for the purpose of line function services as defined in that section; or
- (d) undertakes or proposes to undertake the distribution of water for supply (including irrigation); or
- (e) undertakes or proposes to undertake a drainage or sewerage system; or
- (f) constructs, operates, or proposes to construct or operate, a road or railway line; or
- (g) is an airport authority as defined by the Airport Authorities Act 1966 for the purposes of operating an airport as defined by that Act; or
- (h) is a provider of any approach control service within the meaning of the Civil Aviation Act 1990; or
- (i) undertakes or proposes to undertake a project or work prescribed as a network utility operation for the purposes of this definition by regulations made under this Act,—

and the words **network utility operation** have a corresponding meaning

**requiring authority** means—

- (a) a Minister of the Crown; or
- (b) a local authority; or
- (c) a network utility operator approved as a requiring authority under section 167.

Section 166 **designation**: amended, on 7 July 1993, by section 83(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 166 **network utility operator** paragraph (a): amended, on 1 October 2008, by section 17 of the Energy (Fuels, Levies, and References) Amendment Act 2008 (2008 No 60).

Section 166 **network utility operator** paragraph (b): substituted, on 20 December 2001, by section 158 of the Telecommunications Act 2001 (2001 No 103).

Section 166 **network utility operator** paragraph (c): substituted, on 7 July 1993, by section 83(2) of the Resource Management Amendment Act 1993 (1993 No 65).

#### **167 Application to become requiring authority**

- (1) A network utility operator may apply to the Minister in the prescribed form for approval as a requiring authority.
- (2) The Minister may make such inquiry into the application and request such information as he or she considers necessary.
- (3) The Minister may, by notice in the *Gazette*, approve an applicant under subsection (1) as a requiring authority for the purposes of—
  - (a) a particular project or work; or
  - (b) a particular network utility operation—on such terms and conditions (including provision of a bond) as are specified in the notice.
- (4) The Minister shall not issue a notice under subsection (3) unless he or she is satisfied that—
  - (a) the approval of the applicant as a requiring authority is appropriate for the purposes of carrying on the project, work, or network utility operation; and
  - (b) the applicant is likely to satisfactorily carry out all the responsibilities (including financial responsibilities) of a requiring authority under this Act and will give proper regard to the interests of those affected and to the interests of the environment.

- (5) Where the Minister is satisfied that—
- (a) a requiring authority is unlikely to undertake or complete a project, work, or network utility operation for which approval as a requiring authority was given; or
  - (b) a requiring authority is unlikely to satisfactorily carry out any responsibility as a requiring authority under this Act; or
  - (c) a requiring authority is no longer a network utility operator—
- the Minister shall, by notice in the *Gazette*, revoke the relevant approval given under subsection (3).
- (6) Upon the revocation of an approval under subsection (5), all functions, powers, and duties of the former requiring authority under this Act in relation to any designation, or any requirement for a designation, shall be deemed to be transferred to the Minister under section 180.

Section 167: substituted, on 7 July 1993, by section 84 of the Resource Management Amendment Act 1993 (1993 No 65).

**168 Notice of requirement to territorial authority**

- (1) A Minister of the Crown who, or a local authority which, has financial responsibility for a public work, may at any time give notice in the prescribed form to a territorial authority of its requirement for a designation—
- (a) for a public work; or
  - (b) in respect of any land, water, subsoil, or airspace where a restriction is necessary for the safe or efficient functioning or operation of a public work.
- (2) A requiring authority for the purposes approved under section 167 may at any time give notice in the prescribed form to a territorial authority of its requirement for a designation—
- (a) for a project or work; or
  - (b) in respect of any land, water, subsoil, or airspace where a restriction is reasonably necessary for the safe or efficient functioning or operation of such a project or work.
- (3) *[Repealed]*
- (4) A requiring authority may at any time withdraw a requirement by giving notice in writing to the territorial authority affected.

- (5) Upon receipt of notification under subsection (4), the territorial authority shall—
- (a) publicly notify the withdrawal; and
  - (b) notify all persons upon whom the requirement has been served.

Section 168(1): amended, on 1 August 2003, by section 60(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 168(2): amended, on 1 August 2003, by section 60(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 168(2): amended, on 7 July 1993, by section 85(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 168(2)(a): substituted, on 7 July 1993, by section 85(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 168(3): repealed, on 1 August 2003, by section 60(3) of the Resource Management Amendment Act 2003 (2003 No 23).

#### **168A Notice of requirement by territorial authority**

- (1) This section applies if a territorial authority decides to issue a notice of requirement for a designation—
- (a) for a public work within its district and for which it has financial responsibility; or
  - (b) in respect of any land, water, subsoil, or airspace where a restriction is necessary for the safe or efficient functioning or operation of a public work.
- (1A) The territorial authority must decide whether to notify the notice of requirement under sections 95A to 95F (but without the time limit specified by section 95), which apply with all necessary modifications and as if—
- (a) a reference to a resource consent were a reference to the requirement; and
  - (b) a reference to an applicant or a consent authority were a reference to the territorial authority; and
  - (c) a reference to an application for a resource consent were a reference to the notice of requirement; and
  - (d) a reference to an activity were a reference to the designation.
- (1B) Section 168 applies to the notice of requirement with all necessary modifications.
- (2) Sections 96, 97, and 99 to 103 apply to the notice of requirement with the modifications described in subsection (1A).

- (2A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.
- (3) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—
  - (a) any relevant provisions of—
    - (i) a national policy statement:
    - (ii) a New Zealand coastal policy statement:
    - (iii) a regional policy statement or proposed regional policy statement:
    - (iv) a plan or proposed plan; and
  - (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
    - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
    - (ii) it is likely that the work will have a significant adverse effect on the environment; and
  - (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
  - (d) any other matter the territorial authority considers reasonably necessary in order to make a decision on the requirement.
- (4) The territorial authority may decide to—
  - (a) confirm the requirement:
  - (b) modify the requirement:
  - (c) impose conditions:
  - (d) withdraw the requirement.
- (5) Sections 173, 174, and 175 apply, with all necessary modifications, in respect of a decision made under subsection (4).

Section 168A: inserted, on 7 July 1993, by section 86 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 168A(1): substituted, on 1 October 2009, by section 102 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 168A(1A): inserted, on 1 October 2009, by section 102 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 168A(1B): inserted, on 1 October 2009, by section 102 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 168A(2): substituted, on 1 October 2009, by section 102 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 168A(2A): inserted, on 1 October 2009, by section 102 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 168A(3): substituted, on 1 August 2003, by section 61(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 168A(4): substituted, on 1 August 2003, by section 61(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 168A(5): added, on 1 August 2003, by section 61(3) of the Resource Management Amendment Act 2003 (2003 No 23).

**169 Further information, notification, submissions, and hearing for notice of requirement to territorial authority**

- (1) If a territorial authority is given a notice of requirement under section 168, the territorial authority must decide whether to notify the notice under sections 95 to 95F, which apply with all necessary modifications and as if—
  - (a) a reference to a resource consent were a reference to the requirement; and
  - (b) a reference to an applicant were a reference to the requiring authority; and
  - (c) a reference to an application for a resource consent were a reference to the notice of requirement; and
  - (d) a reference to a consent authority were a reference to the territorial authority; and
  - (e) a reference to an activity were a reference to the designation.
- (2) Unless the territorial authority applies section 170, sections 92 to 92B and 96 to 103 apply to the notice of requirement with all necessary modifications and—
  - (a) with the modifications described in subsection (1); and
  - (b) as if a reference to a decision on the application for a resource consent were a reference to a recommendation by the territorial authority under section 171.

Section 169: substituted, on 1 October 2009, by section 103 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**170 Discretion to include requirement in proposed plan**

If a territorial authority is given notice of a requirement under section 168, and proposes to publicly notify a proposed plan under clause 5 of Schedule 1 within 40 working days of receipt of that requirement, the territorial authority may, with the consent of the requiring authority, include the requirement in its proposed plan instead of complying with section 169.

**171 Recommendation by territorial authority**

- (1A) When considering a requirement and any submissions received, a territorial authority must not have regard to trade competition or the effects of trade competition.
- (1) When considering a requirement and any submissions received, a territorial authority must, subject to Part 2, consider the effects on the environment of allowing the requirement, having particular regard to—
- (a) any relevant provisions of—
    - (i) a national policy statement;
    - (ii) a New Zealand coastal policy statement;
    - (iii) a regional policy statement or proposed regional policy statement;
    - (iv) a plan or proposed plan; and
  - (b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
    - (i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
    - (ii) it is likely that the work will have a significant adverse effect on the environment; and
  - (c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
  - (d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.

- (2) The territorial authority may recommend to the requiring authority that it—
  - (a) confirm the requirement:
  - (b) modify the requirement:
  - (c) impose conditions:
  - (d) withdraw the requirement.
- (3) The territorial authority must give reasons for its recommendation under subsection (2).

Section 171: substituted, on 1 August 2003, by section 63 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 171(1A): inserted, on 1 October 2009, by section 104 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **172 Decision of requiring authority**

- (1) Within 30 working days of the day on which it receives a territorial authority's recommendation under section 171, a requiring authority shall advise the territorial authority whether the requiring authority accepts or rejects the recommendation in whole or in part.
- (2) A requiring authority may modify a requirement if, and only if, that modification is recommended by the territorial authority or is not inconsistent with the requirement as notified.
- (3) Where a requiring authority rejects the recommendation in whole or in part, or modifies the requirement, the authority shall give reasons for its decision.

## **173 Notification of decision on designation**

- (1) A territorial authority must ensure that, within 15 working days after a decision is made by a requiring authority under section 172, a notice of decision and a statement of the time within which an appeal against the decision may be lodged is served on—
  - (a) persons who made a submission; and
  - (b) land owners and occupiers directly affected by the decision.
- (2) If the territorial authority gives a notice summarising a decision, it must—



- (a) make a copy of the decision available (whether physically or by electronic means) at all its offices and all public libraries in the district; and
- (b) include with the notice a statement of the places where a copy of the decision is available; and
- (c) send or provide, on request, a copy of the decision within 3 working days after the request is received.

Section 173: substituted, on 1 August 2003, by section 64 of the Resource Management Amendment Act 2003 (2003 No 23).

#### **174 Appeals**

- (1) Any 1 or more of the following persons may appeal to the Environment Court in accordance with this section against the whole or any part of a decision of a requiring authority under section 172:
  - (a) the territorial authority concerned;
  - (b) any person who made a submission on the requirement.
- (2) Notice of an appeal under this section shall—
  - (a) state the reasons for the appeal and the relief sought; and
  - (b) state any matters required to be stated by regulations; and
  - (c) be lodged with the Environment Court and be served on the requiring authority whose decision is appealed against, within 15 working days of the date on which notice of the decision is given in accordance with section 173.
- (3) The appellant shall ensure that a copy of the notice of appeal is served on every person referred to in subsection (1) (other than the appellant), within 5 working days after the notice is lodged with the court.
- (4) In determining an appeal, the Environment Court must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority, and may—
  - (a) cancel a requirement; or
  - (b) confirm a requirement; or
  - (c) confirm a requirement, but modify it or impose conditions on it as the court thinks fit.

Section 174(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 174(2)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 174(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 174(4): substituted, on 1 October 2009, by section 105 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **175 Designation to be provided for in district plan**

- (1) Subsection (2) applies to a territorial authority if—
- (a) a requiring authority makes a decision under section 172 and one of the following applies:
    - (i) no appeal is lodged against the requiring authority's decision within the time permitted by section 174(2)(c); or
    - (ii) an appeal is lodged against the requiring authority's decision under section 174 but is withdrawn or dismissed; or
    - (iii) an appeal is lodged against the requiring authority's decision and the Environment Court confirms or modifies the requirement; or
  - (b) a board of inquiry decides to confirm a requirement with or without modifications under section 149R; or
  - (c) the Environment Court decides to confirm a requirement with or without modifications under section 149U, 198E, or 198K.
- (2) The territorial authority must, as soon as practicable and without using Schedule 1,—
- (a) include the designation in its district plan and any proposed district plan as if it were a rule in accordance with the requirement as issued or modified in accordance with this Act; and
  - (b) state in its district plan and in any proposed district plan the name of the requiring authority that has the benefit of the designation.

Section 175: substituted, on 1 October 2009, by section 106 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**176 Effect of designation**

- (1) If a designation is included in a district plan, then—
- (a) section 9(3) does not apply to a public work or project or work undertaken by a requiring authority under the designation; and
  - (b) no person may, without the prior written consent of that requiring authority, do anything in relation to the land that is subject to the designation that would prevent or hinder a public work or project or work to which the designation relates, including—
    - (i) undertaking any use of the land; and
    - (ii) subdividing the land; and
    - (iii) changing the character, intensity, or scale of the use of the land.
- (2) The provisions of a district plan or proposed district plan shall apply in relation to any land that is subject to a designation only to the extent that the land is used for a purpose other than the designated purpose.
- (3) This section is subject to section 177.

Section 176(1): substituted, on 1 August 2003, by section 65 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 176(1)(a): amended, on 1 October 2009, by section 107(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 176(1)(b)(i): amended, on 1 October 2009, by section 107(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 176(2): amended, on 17 December 1997, by section 37(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 176(2): amended, on 7 July 1993, by section 90(2) of the Resource Management Amendment Act 1993 (1993 No 65).

**176A Outline plan**

- (1) Subject to subsection (2), an outline plan of the public work, project, or work to be constructed on designated land must be submitted by the requiring authority to the territorial authority to allow the territorial authority to request changes before construction is commenced.
- (2) An outline plan need not be submitted to the territorial authority if—

- (a) the proposed public work, project, or work has been otherwise approved under this Act; or
  - (b) the details of the proposed public work, project, or work, as referred to in subsection (3), are incorporated into the designation; or
  - (c) the territorial authority waives the requirement for an outline plan.
- (3) An outline plan must show—
  - (a) the height, shape, and bulk of the public work, project, or work; and
  - (b) the location on the site of the public work, project, or work; and
  - (c) the likely finished contour of the site; and
  - (d) the vehicular access, circulation, and the provision for parking; and
  - (e) the landscaping proposed; and
  - (f) any other matters to avoid, remedy, or mitigate any adverse effects on the environment.
- (4) Within 20 working days after receiving the outline plan, the territorial authority may request the requiring authority to make changes to the outline plan.
- (5) If the requiring authority decides not to make the changes requested under subsection (4), the territorial authority may, within 15 working days after being notified of the requiring authority's decision, appeal against the decision to the Environment Court.
- (6) In determining any such appeal, the Environment Court must consider whether the changes requested by the territorial authority will give effect to the purpose of this Act.
- (7) This section applies, with all necessary modifications, to public works, projects, or works to be constructed on designated land by a territorial authority.

Section 176A: inserted, on 17 December 1997, by section 38 of the Resource Management Amendment Act 1997 (1997 No 104).

#### **177 Land subject to existing designation or heritage order**

- (1) Subject to sections 9(2) and 11 to 15, where a designation is included in a district plan, and the land that is the subject of

the designation is already the subject of an earlier designation or heritage order,—

- (a) the requiring authority responsible for the later designation may do anything that is in accordance with that designation only if that authority has first obtained the written consent of the authority responsible for the earlier designation or order; and
  - (b) the authority responsible for the earlier designation or order may, notwithstanding section 176(1)(b) and without obtaining the prior written consent of the later requiring authority, do anything that is in accordance with the earlier designation or order.
- (2) The authority responsible for the earlier designation or order may withhold its consent under subsection (1) only if that authority is satisfied—
- (a) that, in the case of an earlier designation, the thing to be done would prevent or hinder the public work or project or work to which the designation relates; or
  - (b) that in the case of an earlier heritage order, the thing to be done would wholly or partly nullify the effect of the order.

Section 177(1): amended, on 1 October 2009, by section 108 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 177(1): amended, on 7 July 1993, by section 91(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 177(1): amended, on 7 July 1993, by section 91(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 177(1)(a): amended, on 7 July 1993, by section 91(c) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 177(1)(b): amended, on 7 July 1993, by section 91(c) of the Resource Management Amendment Act 1993 (1993 No 65).

## **178 Interim effect of requirements for designations**

- (1) This section applies when—
- (a) a requiring authority gives notice of a requirement for a designation to the EPA under section 145:
  - (b) a requiring authority gives notice of a requirement for a designation to a territorial authority under section 168:

- (c) a territorial authority decides to issue a notice of requirement for a designation within its own district under section 168A:
  - (d) a requiring authority gives notice of a requirement for a modified designation under clause 4 of Schedule 1:
  - (e) a territorial authority decides to include a requirement for a designation in its proposed district plan under clause 4 of Schedule 1.
- (2) In the period that starts as described in subsection (3) and ends as described in subsection (4), no person may do anything that would prevent or hinder the public work, project, or work to which the designation relates unless the person has the prior written consent of the requiring authority.
- (3) The period starts,—
  - (a) for the purposes of subsection (1)(a), on the day on which the requiring authority gives notice under section 145:
  - (b) for the purposes of subsection (1)(b), on the day on which the requiring authority gives notice of the requirement under section 168:
  - (c) for the purposes of subsection (1)(c), on the day on which the territorial authority decides whether to notify the notice of requirement under section 168A:
  - (d) for the purposes of subsection (1)(d), on the day on which the requiring authority gives notice of the requirement for the modified designation under clause 4 of Schedule 1:
  - (e) for the purposes of subsection (1)(e), on the day on which the territorial authority decides to include a requirement for a designation in its proposed district plan under clause 4 of Schedule 1.
- (4) The period ends on the earliest of the following days:
  - (a) the day on which the requirement is withdrawn:
  - (b) the day on which the requirement is cancelled:
  - (c) the day on which the designation is included in the district plan.
- (5) A person who contravenes subsection (2) does not commit an offence against this Act unless the person knew, or could rea-

sonably be expected to have known, of the existence of the requirement.

- (6) This section does not prevent an authority responsible for an earlier designation or heritage order from doing anything that is in accordance with the earlier designation or order.

Section 178: substituted, on 1 October 2009, by section 109 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**179 Appeals relating to sections 176 to 178**

- (1) Any person who has been refused consent by a requiring authority under section 176(1)(b), 177(2), or 178(2), or who has been granted such consent subject to conditions, may appeal to the Environment Court against the refusal or the conditions.
- (2) Notice of an appeal under this section shall—
- (a) state the reasons for the appeal and the relief sought; and
  - (b) state any matters required to be stated by regulations; and
  - (c) be lodged with the Environment Court and served on the requiring authority whose decision is appealed against within 15 working days of receiving the requiring authority's decision under section 176(1)(b), 177(2), or 178(2).
- (3) In considering an appeal under this section, the court shall have regard to—
- (a) whether the decision appealed against has caused or is likely to cause serious hardship to the appellant; and
  - (b) whether the decision appealed against would render the land which is subject to the designation or requirement incapable of reasonable use; and
  - (c) the extent to which the decision may be modified without wholly or partly nullifying the effect of the requirement or designation—

and may confirm or reverse the decision appealed against or modify the decision in such manner as the court thinks fit.

Section 179(1): amended, on 1 October 2009, by section 110(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 179(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 179(2)(c): amended, on 1 October 2009, by section 110(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 179(2)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 179(3): substituted, on 7 July 1993, by section 93 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 179(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **180 Transfer of rights and responsibilities for designations**

- (1) Where the financial responsibility for a project or work or network utility operation is transferred from one requiring authority to another, responsibility for any relevant designation shall also be transferred.
- (2) The requiring authority which transfers responsibility for the designation shall advise the Minister for the Environment and the relevant territorial authority, and, for the purposes of section 175(2)(b), the transfer shall, without using the process in Schedule 1, be noted in the district plan.

Section 180: substituted, on 7 July 1993, by section 94 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 180(2): amended, on 1 October 2009, by section 111 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 180(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **181 Alteration of designation**

- (1) A requiring authority that is responsible for a designation may at any time give notice to the territorial authority of its requirement to alter the designation.
- (2) Subject to subsection (3), sections 168 to 179 shall, with all necessary modifications, apply to a requirement referred to in subsection (1) as if it were a requirement for a new designation.
- (3) A territorial authority may at any time alter a designation in its district plan or a requirement in its proposed district plan if—
  - (a) the alteration—



- (i) involves no more than a minor change to the effects on the environment associated with the use or proposed use of land or any water concerned; or
    - (ii) involves only minor changes or adjustments to the boundaries of the designation or requirement; and
  - (b) written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and
  - (c) both the territorial authority and the requiring authority agree with the alteration—
- and sections 168 to 179 shall not apply to any such alteration.
- (4) This section shall apply, with all necessary modifications, to a requirement by a territorial authority to alter its own designation or requirement within its own district.

Section 181(3): amended, on 1 August 2003, by section 66(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 181(3): amended, on 1 August 2003, by section 66(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 181(3)(a)(ii): amended, on 1 August 2003, by section 66(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 181(4): added, on 7 July 1993, by section 95 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 181(4): amended, on 1 August 2003, by section 66(4) of the Resource Management Amendment Act 2003 (2003 No 23).

## **182 Removal of designation**

- (1) If a requiring authority no longer wants a designation or part of a designation, it shall give notice in the prescribed form to—
- (a) the territorial authority concerned; and
  - (b) every person who is known by the requiring authority to be the owner or occupier of any land to which the designation relates; and
  - (c) every other person who, in the opinion of the requiring authority, is likely to be affected by the designation.
- (2) As soon as reasonably practicable after receiving a notice under subsection (1), the territorial authority shall, without

using the process in Schedule 1, amend its district plan accordingly.

- (3) The provisions of Schedule 1 shall not apply to any removal of a designation or part of a designation under this section.
- (4) This section shall apply, with all necessary modifications, to a notice by a territorial authority to withdraw its own designation or part of a designation within its own district.
- (5) Notwithstanding subsections (2) to (4), where a territorial authority considers the effect of the removal of part of a designation on the remaining designation is more than minor, it may, within 20 working days of receipt of the notice under subsection (1), decline to remove that part of the designation.
- (6) A requiring authority may object, under section 357, to any decision to decline removal of part of a designation under subsection (5).

Section 182: substituted, on 7 July 1993, by section 96 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 182(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **183 Review of designation which has not lapsed**

*[Repealed]*

Section 183: repealed, on 7 July 1993, by section 97 of the Resource Management Amendment Act 1993 (1993 No 65).

### **184 Lapsing of designations which have not been given effect to**

- (1) A designation lapses on the expiry of 5 years after the date on which it is included in the district plan unless—
  - (a) it is given effect to before the end of that period; or
  - (b) the territorial authority determines, on an application made within 3 months before the expiry of that period, that substantial progress or effort has been made towards giving effect to the designation and is continuing to be made and fixes a longer period for the purposes of this subsection; or
  - (c) the designation specified a different period when incorporated in the plan.

- (2) Where paragraph (b) or paragraph (c) of subsection (1) applies in respect of a designation, the designation shall lapse on the expiry of the period referred to in that paragraph unless—
  - (a) it is given effect to before the end of that period; or
  - (b) the territorial authority determines, on an application made within 3 months before the expiry of that period, that substantial progress or effort has been made towards giving effect to the designation and is continuing to be made and fixes a longer period for the purposes of this subsection.
- (3) A requiring authority may object, under section 357, to a decision not to fix a longer period for the purposes of subsection (1).

Section 184(1): amended, on 7 July 1993, by section 98 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 184(3): added, on 10 August 2005, by section 90 of the Resource Management Amendment Act 2005 (2005 No 87).

#### **184A Lapsing of designations of territorial authority in its own district**

- (1) Section 184 shall not apply to a designation of a territorial authority in its own district.
- (2) A designation of a territorial authority in its own district lapses on the expiry of 5 years after the date on which it is included in the district plan unless—
  - (a) it is given effect to before the end of that period; or
  - (b) within 3 months before the expiry of that period, the territorial authority resolves that it has made, and is continuing to make, substantial progress or effort towards giving effect to the designation and fixes a longer period for the purposes of this subsection; or
  - (c) the designation specified a different period when incorporated in the plan.
- (3) Where paragraph (b) or paragraph (c) of subsection (2) applies in respect of a designation, the designation shall lapse on the expiry of the period referred to in whichever of those paragraphs is applicable, unless—
  - (a) it is given effect to before the end of that period; or

- (b) within 3 months before the expiry of that period, the territorial authority resolves that it has made, and is continuing to make, substantial progress or effort towards giving effect to the designation and fixes a longer period for the purpose of this subsection.

Section 184A: inserted, on 7 July 1993, by section 99 of the Resource Management Amendment Act 1993 (1993 No 65).

### **185 Environment Court may order taking of land**

- (1) An owner of an estate or interest in land (including a leasehold estate or interest) that is subject to a designation or requirement under this Part may apply at any time to the Environment Court for an order obliging the requiring authority responsible for the designation or requirement to acquire or lease all or part of the owner's estate or interest in the land under the Public Works Act 1981.
- (2) An application under subsection (1) shall be in the prescribed form and a copy of the application shall be served upon the requiring authority and the relevant territorial authority by the applicant.
- (3) The Environment Court may make an order applied for under subsection (1) if it is satisfied that—
  - (a) the owner has tried but been unable to enter into an agreement for the sale of the estate or interest in the land subject to the designation or requirement at a price not less than the market value that the land would have had if it had not been subject to the designation or requirement; and
  - (b) either—
    - (i) the designation or requirement prevents reasonable use of the owner's estate or interest in the land; or
    - (ii) the applicant was the owner, or the spouse, civil union partner, or de facto partner of the owner, of the estate or interest in the land when the designation or requirement was created.
- (4) Before making an order under subsection (1) the court may direct the owner to take further action to try to sell the estate or interest in the land.

- (5) If the Environment Court makes an order to take an estate or interest in land under the Public Works Act 1981, the owner of that estate or interest shall be deemed to have entered into an agreement with the requiring authority responsible for the designation or requirement for the purposes of section 17 of the Public Works Act 1981.
- (6) Where subsection (5) applies in respect of a requiring authority which is a network utility operator approved under section 167—
- (a) any agreement shall be deemed to have been entered into with the Minister of Lands on behalf of the network utility operator as if the land were required for a government work; and
- (b) all costs and expenses incurred by the Minister of Lands in respect of the acquisition of the land shall be recoverable from the network utility operator as a debt due to the Crown.
- (7) The amount of compensation payable for an estate or interest in land ordered to be taken under this section shall be assessed as if the designation or requirement had not been created.

Section 185 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 185(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 185(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 185(3)(b)(ii): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 185(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 185(5): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **186 Compulsory acquisition powers**

- (1) A network utility operator that is a requiring authority may apply to the Minister of Lands to have land required for a project or work acquired or taken under Part 2 of the Public Works Act 1981 as if the project or work were a government work within the meaning of that Act and, if the Minister of Lands agrees, that land may be taken or acquired.

- (2) The effect of any Proclamation taking land for the purposes of subsection (1) shall be to vest the land in the network utility operator instead of the Crown.
- (3) Land which is subject to a heritage order shall not be taken without the consent of the heritage protection authority.
- (4) Any land held under any enactment or in any other manner by the Crown or a local authority may, with the consent of the Crown or that authority and on such terms and conditions (including price) as may be agreed, be set apart for a project or work of a network utility operator in the manner provided in sections 50 and 52 of the Public Works Act 1981 (with the necessary modifications), but the setting apart shall not be subject to sections 40 and 41 of that Act. Any land so set apart shall vest in the network utility operator.
- (5) Any claim for compensation under the Public Works Act 1981 in respect of land acquired or taken in accordance with this section shall be made against the Minister of Lands.
- (6) All costs and expenses incurred by the Minister of Lands in respect of the acquisition or taking of land in accordance with this section (including any compensation payable by the Minister) shall be recoverable from the network utility operator as a debt due to the Crown.
- (7) Sections 40 and 41 of the Public Works Act 1981 shall apply to land acquired or taken in accordance with this section as if the network utility operator concerned were the Crown.
- (8) For the purposes of this section, an interest in land, including a leasehold interest, may be acquired or taken as if references to land were references to an interest in land.

Section 186(1): substituted, on 1 August 2003, by section 67 of the Resource Management Amendment Act 2003 (2003 No 23).

### *Heritage orders*

#### **187 Meaning of heritage order and heritage protection authority**

In this Act—

**heritage order** means a provision made in a district plan to give effect to a requirement made by a heritage protection authority under section 189 or section 189A

**heritage protection authority** means—

- (a) any Minister of the Crown including—
  - (i) the Minister of Conservation acting either on his or her own motion or on the recommendation of the New Zealand Conservation Authority, a local conservation board, the New Zealand Fish and Game Council, or a Fish and Game Council; and
  - (ii) the Minister of Maori Affairs acting either on his or her own motion or on the recommendation of an iwi authority;
- (b) a local authority acting either on its own motion or on the recommendation of an iwi authority;
- (c) the New Zealand Historic Places Trust in so far as it exercises its functions under the Historic Places Act 1993;
- (d) a body corporate that is approved as a heritage protection authority under section 188.

Section 187 **heritage order**: amended, on 7 July 1993, by section 100(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 187 **heritage protection authority** paragraph (c): amended, on 1 July 1993, pursuant to section 118(1) of the Historic Places Act 1993 (1993 No 38).

Section 187 **heritage protection authority** paragraph (d): amended, on 7 July 1993, by section 100(2) of the Resource Management Amendment Act 1993 (1993 No 65).

## **188 Application to become heritage protection authority**

- (1) Any body corporate having an interest in the protection of any place may apply to the Minister in the prescribed form for approval as a heritage protection authority for the purpose of protecting that place.
- (2) For the purpose of this section, and sections 189 and 191, **place** includes any feature or area, and the whole or part of any structure.
- (3) The Minister may make such inquiry into the application and request such information as he or she considers necessary.
- (4) The Minister may, by notice in the *Gazette*, approve an applicant under subsection (1) as a heritage protection authority for the purpose of protecting the place and on such terms and conditions (including provision of a bond) as are specified in the notice.

- (5) The Minister shall not issue a notice under subsection (4) unless he or she is satisfied that—
- (a) the approval of the applicant as a heritage protection authority is appropriate for the protection of the place that is the subject of the application; and
  - (b) the applicant is likely to satisfactorily carry out all the responsibilities (including financial responsibilities) of a heritage protection authority under this Act.
- (6) Where the Minister is satisfied that—
- (a) a heritage protection authority is unlikely to continue to satisfactorily protect the place for which approval as a heritage protection authority was given; or
  - (b) a heritage protection authority is unlikely to satisfactorily carry out any responsibility as a heritage protection authority under this Act,—
- the Minister shall, by notice in the *Gazette*, revoke an approval given under subsection (4).
- (7) Upon—
- (a) the revocation of the approval of a body corporate under subsection (6); or
  - (b) the dissolution of any body corporate approved as a heritage protection authority under subsection (4)—
- all functions, powers, and duties of the body corporate under this Act in relation to any heritage order, or requirement for a heritage order, shall be deemed to be transferred to the Minister under section 192.
- (8) *[Repealed]*
- Section 188 heading: amended, on 7 July 1993, by section 101 of the Resource Management Amendment Act 1993 (1993 No 65).
- Section 188(3): substituted, on 7 July 1993, by section 101 of the Resource Management Amendment Act 1993 (1993 No 65).
- Section 188(4): substituted, on 7 July 1993, by section 101 of the Resource Management Amendment Act 1993 (1993 No 65).
- Section 188(5): substituted, on 7 July 1993, by section 101 of the Resource Management Amendment Act 1993 (1993 No 65).
- Section 188(6): substituted, on 7 July 1993, by section 101 of the Resource Management Amendment Act 1993 (1993 No 65).
- Section 188(7): substituted, on 7 July 1993, by section 101 of the Resource Management Amendment Act 1993 (1993 No 65).



Section 188(8): repealed, on 7 July 1993, by section 101 of the Resource Management Amendment Act 1993 (1993 No 65).

**189 Notice of requirement to territorial authority**

- (1) A heritage protection authority may give notice in the prescribed form to a territorial authority of its requirement for a heritage order for the purpose of protecting—
  - (a) any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural, or historical reasons; and
  - (b) such area of land (if any) surrounding that place as is reasonably necessary for the purpose of ensuring the protection and reasonable enjoyment of that place.
- (2) For the purposes of this section, a place may be of special interest by having special cultural, architectural, historical, scientific, ecological, or other interest.
- (3) *[Repealed]*
- (4) A heritage protection authority may withdraw a requirement under this section by giving notice in writing to the territorial authority affected.
- (5) Upon receipt of notification under subsection (4), the territorial authority shall—
  - (a) publicly notify the withdrawal; and
  - (b) notify all persons upon whom the requirement has been served.

Section 189(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 189(3): repealed, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**189A Notice of requirement for heritage order by territorial authority**

- (1) This section applies if a territorial authority decides to issue a notice of requirement for a heritage order within its own district for the purposes described in section 189(1) and (2).

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- (2) The territorial authority must decide whether to notify the notice of requirement under sections 95A to 95F (but without the time limit specified by section 95), which apply with all necessary modifications and as if—
- (a) a reference to a resource consent were a reference to the requirement; and
  - (b) a reference to an applicant or a consent authority were a reference to the territorial authority; and
  - (c) a reference to an application for a resource consent were a reference to the notice of requirement; and
  - (d) a reference to an activity were a reference to the heritage order.
- (3) Section 189 applies to the notice of requirement with all necessary modifications.
- (4) If the requirement is publicly notified, any person may make a submission about it to the territorial authority.
- (5) If the requirement is the subject of limited notification, a person notified may make a submission about it to the territorial authority.
- (6) A submission must be in the prescribed form.
- (7) A submission must be served on the territorial authority within the time allowed by section 97, which applies with all necessary modifications.
- (8) A submission may state whether—
- (a) it supports the requirement; or
  - (b) it opposes the requirement; or
  - (c) it is neutral.
- (9) Sections 99 to 103 apply to the notice of requirement with the modifications described in subsection (2).
- (10) In considering the requirement, the territorial authority must have regard to—
- (a) the matters set out in section 191; and
  - (b) all submissions.
- (11) The territorial authority may—
- (a) confirm the requirement, with or without conditions; or
  - (b) modify the requirement, with or without conditions; or
  - (c) withdraw the requirement.

Section 189A: substituted, on 1 October 2009, by section 112 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**190 Further information, notification, submissions, and hearing for notice of requirement to territorial authority**

- (1) If a territorial authority is given a notice of requirement under section 189, the territorial authority must decide whether to notify the notice under sections 95 to 95F, which apply with all necessary modifications and as if—
  - (a) a reference to a resource consent were a reference to the requirement; and
  - (b) a reference to an applicant were a reference to the heritage protection authority; and
  - (c) a reference to an application for a resource consent were a reference to the notice of requirement; and
  - (d) a reference to a consent authority were a reference to the territorial authority; and
  - (e) a reference to an activity were a reference to the heritage order.
- (2) If the requirement is publicly notified, any person may make a submission about it to the territorial authority.
- (3) If the requirement is the subject of limited notification, a person notified may make a submission about it to the territorial authority.
- (4) A submission must be in the prescribed form.
- (5) A submission must be served on the territorial authority within the time allowed by section 97, which applies with all necessary modifications, and a copy of the submission must be served on the heritage protection authority as soon as is reasonably practicable after the submission is served on the territorial authority.
- (6) A submission may state whether—
  - (a) it supports the requirement; or
  - (b) it opposes the requirement; or
  - (c) it is neutral.
- (7) Sections 92 to 92B and 98 to 103 apply to the notice of requirement with all necessary modifications and—
  - (a) with the modifications described in subsection (1); and

- (b) as if a reference to a decision on the application for a resource consent were a reference to a recommendation by the territorial authority under section 191.

Section 190: substituted, on 1 October 2009, by section 113 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **191 Recommendation by territorial authority**

- (1) Subject to Part 2, when considering a requirement made under section 189, a territorial authority shall have regard to the matters set out in the notice given under section 189 (together with any further information and reports with which the authority is supplied), and all submissions, and shall also have particular regard to—
  - (a) whether the place merits protection; and
  - (b) whether the requirement is reasonably necessary for protecting the place to which the requirement relates; and
  - (c) whether the inclusion in the requirement of any area of land surrounding the place is necessary for the purpose of ensuring the protection and reasonable enjoyment of the place; and
  - (d) all relevant provisions of any national policy statement, New Zealand coastal policy statement, regional policy statement, regional plan, or district plan; and
  - (e) section 189(1); and
  - (f) as appropriate, management plans or strategies approved under any other Act which relate to the place.
- (2) After considering a requirement made under section 189, the territorial authority may recommend—
  - (a) that the requirement be confirmed, with or without modifications; or
  - (b) that the requirement be withdrawn.
- (3) In recommending the confirmation of a requirement under subsection (2)(a), the territorial authority may recommend the imposition of—
  - (a) a condition that the heritage protection authority reimburse the owner of the place for any additional costs of

upkeep of the place required as a result of the making of the heritage order:

- (b) such other conditions as the territorial authority considers appropriate.
- (4) The territorial authority shall give reasons for a recommendation made under subsection (2).

Section 191(1): amended, on 1 October 2009, by section 114 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 191(1): amended, on 7 July 1993, by section 104(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 191(1)(e): amended, on 7 July 1993, by section 104(b) of the Resource Management Amendment Act 1993 (1993 No 65).

## 192 Application of other sections

The following sections shall, with all necessary modifications, apply in respect of a requirement under section 189 or section 189A as if the heritage protection authority was a requiring authority, the heritage order was a designation, and references to section 171 were references to section 191:

- (a) section 172, which relates to decisions of requiring authorities:
- (aa) section 170, which relates to the discretion to include requirements in proposed plans:
- (b) section 173, which relates to public notification of such decisions:
- (c) section 174, which relates to appeals against such decisions:
- (d) section 175, which relates to the provision of designations in district plans:
- (e) section 180, which relates to the transferability of designations.
- (f) *[Repealed]*

Section 192: amended, on 7 July 1993, by section 105(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 192(aa): inserted, on 7 July 1993, by section 105(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 192(f): repealed, on 1 October 2009, by section 115 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**193 Effect of heritage order**

Where a heritage order is included in a district plan then, regardless of the provisions of any plan or resource consent, no person may, without the prior written consent of the relevant heritage protection authority named in the plan in respect of the order, do anything including—

- (a) undertaking any use of land; and
- (b) subdividing any land; and
- (c) changing the character, intensity, or scale of the use of any land—

that would wholly or partly nullify the effect of the heritage order.

Section 193(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**193A Land subject to existing heritage order or designation**

- (1) Subject to sections 9(2) and 11 to 15, where a heritage order is included in a district plan, and the land that is the subject of the heritage order is already the subject of an earlier heritage order or a designation,—
  - (a) the heritage protection authority responsible for the later heritage order may do anything that is in accordance with that heritage order only if that authority has first obtained the written consent of the authority responsible for the earlier order or designation; and
  - (b) the authority responsible for the earlier order or designation may, notwithstanding section 193 and without obtaining the prior written consent of the later heritage protection authority, do anything that is in accordance with the earlier order or designation.
- (2) The authority responsible for the earlier designation or order may withhold its consent under subsection (1) only if that authority is satisfied—
  - (a) that, in the case of an earlier designation, the thing to be done would prevent or hinder the public work or project or work to which the designation relates; or
  - (b) that in the case of an earlier heritage order, the thing to be done would wholly or partly nullify the effect of the order.

Section 193A: inserted, on 7 July 1993, by section 106 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 193A(1): amended, on 1 October 2009, by section 116 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**194 Interim effect of requirement**

- (1) This section applies when—
  - (a) a heritage protection authority gives notice of a requirement for a heritage order to the EPA under section 145:
  - (b) a heritage protection authority gives notice of a requirement for a heritage order to a territorial authority under section 189:
  - (c) a territorial authority decides to issue a notice of requirement for a heritage order within its own district under section 189A:
  - (d) a territorial authority decides to include a requirement for a heritage order in its proposed district plan under clause 4 of Schedule 1.
- (2) In the period that starts as described in subsection (3) and ends as described in subsection (4), no person may do anything that would wholly or partly nullify the effect of the heritage order unless the person has the prior written consent of the heritage protection authority.
- (3) The period starts,—
  - (a) for the purposes of subsection (1)(a), on the day on which the heritage protection authority gives notice under section 145:
  - (b) for the purposes of subsection (1)(b), on the day on which the heritage protection authority gives notice of the requirement under section 189:
  - (c) for the purposes of subsection (1)(c), on the day on which the territorial authority decides whether to notify the notice of requirement under section 189A:
  - (d) for the purposes of subsection (1)(d), on the day on which the territorial authority decides to include a requirement for a heritage order in its proposed district plan under clause 4 of Schedule 1.
- (4) The period ends on the earliest of the following days:

- (a) the day on which the requirement is withdrawn:
  - (b) the day on which the requirement is cancelled:
  - (c) the day on which the heritage order is included in the district plan.
- (5) A person who contravenes subsection (2) does not commit an offence against this Act unless the person knew, or could reasonably be expected to have known, of the existence of the requirement.

Section 194: substituted, on 1 October 2009, by section 117 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **195 Appeals relating to sections 193 and 194**

- (1) Any person who—
- (a) proposes to do anything in relation to land that is subject to a heritage order or requirement for a purpose which, but for the heritage order or requirement, would be lawful; and
  - (b) has been refused consent to undertake that use by a heritage protection authority under section 193 or section 194, or has been granted such consent subject to conditions—
- may appeal to the Environment Court against the refusal or the conditions.
- (2) Notice of an appeal under this section shall—
- (a) state the reasons for the appeal and the relief sought; and
  - (b) state any matters required to be stated by regulations; and
  - (c) be lodged with the Environment Court and served on the heritage protection authority whose decision is appealed against, within 15 working days of receiving the heritage protection authority's decision under section 193 or section 194.
- (3) In considering an appeal under this section, the court shall have regard to—
- (a) whether the decision appealed against has caused or is likely to cause serious hardship to the appellant; and



- (b) whether the decision appealed against would render the land which is subject to the heritage order or requirement incapable of reasonable use; and
- (c) the extent to which the decision may be modified without wholly or partly nullifying the effect of the requirement or heritage order—

and may confirm or reverse the decision appealed against or modify the decision in such manner as the court thinks fit.

Section 195(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 195(2)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 195(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

#### **195A Alteration of heritage order**

- (1) A heritage protection authority that is responsible for a heritage order may at any time give notice to the territorial authority of its requirement to alter the heritage order.
- (2) Sections 189 to 195 apply, with all necessary modifications, to a requirement to alter a heritage order as if it were a requirement for a new heritage order.
- (3) However, a territorial authority may at any time alter a heritage order in its district plan or a requirement in its proposed district plan if—
  - (a) the alteration—
    - (i) involves no more than a minor change to the effects on the environment associated with the heritage order concerned; or
    - (ii) involves only minor changes or adjustments to the boundaries of the heritage order or requirement; and
  - (b) written notice of the proposed alteration has been given to every owner or occupier of the land directly affected and those owners or occupiers agree with the alteration; and
  - (c) the territorial authority and the heritage protection authority agree with the alteration.

- (4) Sections 189 to 195 do not apply to an alteration under subsection (3).
- (5) This section applies, with all necessary modifications, to a requirement by a territorial authority to alter its own heritage order or requirement within its own district.

Section 195A: inserted, on 1 October 2009, by section 118 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **196 Removal of heritage order**

Section 182 shall apply, with all necessary modifications, in respect of the removal of heritage orders as if—

- (a) a heritage protection authority was a requiring authority; and
- (b) a heritage order was a designation, except that the removal of a heritage order from a district plan shall not take effect until 10 working days after notice of removal is received by the territorial authority or after the territorial authority gives notice of the removal of its heritage order in its own district.

Section 196(b): amended, on 7 July 1993, by section 108 of the Resource Management Amendment Act 1993 (1993 No 65).

#### **197 Compulsory acquisition powers**

- (1) The acquisition of land by a heritage protection authority for the purposes of giving effect to a heritage order shall be deemed to be an acquisition of land, or an interest in land, for a public work for the purposes of the Public Works Act 1981.
- (2) Where a heritage protection authority is neither the Crown nor a local authority, section 186 shall apply, with all necessary modifications, as if every reference to a network utility operator were a reference to a heritage protection authority.

#### **198 Environment Court may order land taken, etc**

- (1) Upon application made to the Environment Court by the owner of an estate or interest in land (including a leasehold estate or interest) that is subject to a heritage order, or requirement under section 189 or section 189A, if the court is satisfied that—

- (a) the applicant was the owner or spouse, civil union partner, or de facto partner of the owner on the date when the heritage order was included in the district plan or the requirement was made; and
- (b) the applicant has tried but been unable to enter into an agreement for the sale of the estate or interest in the land subject to the heritage order or requirement at a price not less than the market value the land would have had if it were not subject to the heritage order or requirement; and
- (c) the heritage order or requirement renders or will render the land in respect of which it applies, incapable of reasonable use,—

the Environment Court may make an order giving the heritage protection authority the option of either withdrawing the requirement or causing the heritage order to be removed, as the case may be, or taking the land under the Public Works Act 1981.

- (2) Before making an order under subsection (1), the court may direct the owner to take further action to try to sell the estate or interest in the land.
- (3) If the court makes an order to take an estate or interest in land under the Public Works Act 1981, the owner of the land shall be deemed to have entered into an agreement with the heritage protection authority responsible for the heritage order or requirement for the purposes of section 17 of the Public Works Act 1981.
- (4) Where subsection (3) applies in respect of a heritage protection authority that is neither the Crown nor a local authority—
  - (a) any agreement shall be deemed to have been entered into with the Minister for Land Information on behalf of the heritage protection authority as if the land were required for a government work; and
  - (b) all costs and expenses incurred by the Minister for Land Information in respect of the acquisition of the land shall be recoverable from the heritage protection authority as a debt due to the Crown.

- (5) The amount of compensation payable for an estate or interest in land ordered to be taken under this section shall be assessed as if the heritage order or requirement had not been made.

Section 198 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 198(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 198(1): amended, on 7 July 1993, by section 109 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 198(1)(a): amended, on 26 April 2005, by section 7 of the Relationships (Statutory References) Act 2005 (2005 No 3).

Section 198(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 198(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 198(4)(a): amended, on 1 July 1996, pursuant to section 2(1) of the Survey Amendment Act 1996 (1996 No 55).

Section 198(4)(b): amended, on 1 July 1996, pursuant to section 2(1) of the Survey Amendment Act 1996 (1996 No 55).

*Streamlining decision-making on designations  
and heritage orders*

Heading: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**198A Sections 198B to 198G apply to requirements under section 168 or 189**

- (1) Sections 198B to 198G apply when a requiring authority or heritage protection authority wants one of the following requirements to be the subject of a decision by the Environment Court instead of a recommendation by a territorial authority and a decision by the requiring authority or heritage protection authority:
- (a) a requirement for a designation under section 168 that has been notified:
  - (b) a requirement for a heritage order under section 189 that has been notified:
  - (c) a requirement under section 181 (other than a notice to which section 181(3) applies) for an alteration to a designation to which section 168 applied that has been notified:

- (d) a requirement under section 195A (other than a notice to which section 195A(3) applies) for an alteration to a heritage order to which section 189 applied that has been notified.
- (2) If the notice of requirement is called in under section 142(2), sections 198B to 198G cease to apply to it.

Section 198A: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**198B Requiring authority or heritage protection authority's request**

- (1) The requiring authority or heritage protection authority must request the relevant territorial authority to allow the requirement to be the subject of a decision by the Environment Court instead of a recommendation by the territorial authority and a decision by the requiring authority or heritage protection authority.
- (2) The requiring authority or heritage protection authority must make the request in the period—
  - (a) starting on the date on which the requiring authority or heritage protection authority gives notice under section 168 or 189; and
  - (b) ending 5 working days after the date on which the period for submissions on the requirement closes.
- (3) The requiring authority or heritage protection authority must make the request electronically or in writing on the prescribed form.

Section 198B: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**198C Territorial authority's decision on request**

- (1) If the territorial authority receives the request after it has determined that the requirement will not be notified, it must return the request.
- (2) If the territorial authority receives the request before it has determined whether the requirement will be notified, it must defer its decision on the request until after it has decided whether to notify the requirement and then apply either subsection (3) or (4).

- (3) If the territorial authority decides not to notify the requirement, it must return the request.
- (4) If the territorial authority decides to notify the requirement, it must give the requiring authority or heritage protection authority its decision on the request within 15 working days after the date of the decision on notification.
- (5) In any other case, the territorial authority must give the requiring authority or heritage protection authority its decision on the request within 15 working days after receiving the request.
- (6) No submitter has a right to be heard by the territorial authority on a request.
- (7) If the territorial authority returns or declines the request, it must give the requiring authority or heritage protection authority its reasons, in writing or electronically, at the same time as it gives the authority its decision.
- (8) If the territorial authority declines the request under subsection (4) or (5), the requiring authority or heritage protection authority may object to the territorial authority under section 357.

Section 198C: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **198D Territorial authority's subsequent processing**

- (1) If the territorial authority does not grant the request under section 198B, it must continue to process the requirement.
- (2) If the territorial authority decides to grant the request under section 198B, it must continue to process the requirement and must comply with subsections (3) to (5).
- (3) The territorial authority must prepare a report on the requirement within the longer of the following periods:
  - (a) the period that ends 20 working days after the date on which the period for submissions on the requirement closes;
  - (b) the period that ends 20 working days after the date on which the territorial authority decides to grant the request.
- (4) In the report, the territorial authority may—

- (a) address issues that are set out in section 171 or 191 to the extent that they are relevant to the requirement; and
  - (b) suggest conditions that it considers should be imposed if the Environment Court confirms the requirement (with or without modifications).
- (5) As soon as is reasonably practicable after the report is prepared, the territorial authority must provide a copy to—
  - (a) the requiring authority or heritage protection authority; and
  - (b) every person who made a submission on the requirement.

Section 198D: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **198E Environment Court decides**

- (1) Subsection (2) applies to a requiring authority or heritage protection authority who—
  - (a) receives a report under section 198D(5); and
  - (b) continues to want the requirement to be the subject of a decision by the Environment Court instead of a recommendation by the territorial authority and a decision by the requiring authority or heritage protection authority.
- (2) The requiring authority or heritage protection authority must,—
  - (a) within 10 working days after receiving the report, lodge with the Environment Court a notice of motion in the prescribed form specifying the orders sought and the grounds upon which the application is made, and a supporting affidavit as to the matters giving rise to the application; and
  - (b) as soon as is reasonably practicable after lodging the notice of motion, serve a copy of the notice of motion and affidavit on—
    - (i) the territorial authority that granted the requiring authority's or heritage protection authority's request under section 198B; and
    - (ii) every person who made a submission to the territorial authority on the requirement; and

- (c) tell the Registrar of the Environment Court when the copies have been served.
- (3) A territorial authority served under subsection (2)(b)(i) must, without delay, provide the Environment Court with—
  - (a) the requirement to which the notice of motion relates; and
  - (b) the authority's report on the requirement; and
  - (c) all the submissions on the requirement that the authority received; and
  - (d) all the information and reports on the requirement that the authority was supplied with.
- (4) Section 274 applies to the notice of motion.
- (5) Part 11 applies to proceedings under this section.
- (6) If considering a matter that is a notice of requirement for a designation or to alter a designation, the court—
  - (a) must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority; and
  - (b) may—
    - (i) cancel the requirement; or
    - (ii) confirm the requirement; or
    - (iii) confirm the requirement, but modify it or impose conditions on it as the court thinks fit; and
  - (c) may waive the requirement for an outline plan to be submitted under section 176A.
- (7) If considering a matter that is a notice of requirement for a heritage order or to alter a heritage order, the court—
  - (a) must have regard to the matters set out in section 191(1); and
  - (b) may—
    - (i) cancel the requirement; or
    - (ii) confirm the requirement; or
    - (iii) confirm the requirement, but modify it or impose conditions on it as the court thinks fit (including a condition that the heritage protection authority reimburse the owner of the place concerned for any additional costs of upkeep of the place resulting from the making or the modifying of the order).



Section 198E: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**198F Residual powers of territorial authority**

The territorial authority that would have dealt with the requirement had the Environment Court not done so under section 198E has all the functions, duties, and powers in relation to the designation or heritage order resulting from the requirement as if it had dealt with the requirement itself.

Section 198F: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**198G When territorial authority must deal with requirement**

- (1) This section applies when—
  - (a) a requiring authority or heritage protection authority receives a report under section 198D(5); and
  - (b) either—
    - (i) the requiring authority or heritage protection authority advises the territorial authority that the requiring authority does not intend to lodge a notice of motion with the Environment Court under section 198E(2); or
    - (ii) the requiring authority or heritage protection authority does not lodge a notice of motion with the Environment Court under section 198E(2); and
  - (c) the requiring authority or heritage protection authority continues to want the requirement dealt with.
- (2) The territorial authority must deal with the requirement.

Section 198G: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**198H Sections 198I to 198M apply to requirements under section 168A or 189A**

- (1) Sections 198I to 198M apply when a territorial authority makes a decision that one of the following requirements is to be the subject of a decision by the Environment Court instead of a decision by the territorial authority:
  - (a) a requirement for a designation under section 168A that has been notified:

- (b) a requirement for a heritage order under section 189A that has been notified:
  - (c) a requirement under section 181 (other than a notice to which section 181(3) applies) for an alteration to a designation to which section 168A applied that has been notified:
  - (d) a requirement under section 195A (other than a notice to which section 195A(3) applies) for an alteration to a heritage order to which section 189A applied that has been notified.
- (2) If the notice of requirement is called in under section 142(2), sections 198I to 198M cease to apply to it.

Section 198H: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **198I Territorial authority's decision**

- (1) The territorial authority must make its decision in the period—
- (a) starting on the date on which the territorial authority decides to notify the requirement under section 168A(1A) or 189A(2); and
  - (b) ending 5 working days after the date on which the period for submissions on the requirement closes.
- (2) No submitter has a right to be heard by the territorial authority on a decision under section 198H.

Section 198I: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **198J Territorial authority's subsequent processing**

- (1) The territorial authority must continue to process the requirement and must comply with subsections (2) to (4).
- (2) The territorial authority must prepare a report on the requirement within the longer of the following periods:
- (a) the period that ends 20 working days after the date on which the period for submissions on the requirement closes:
  - (b) the period that ends 20 working days after the date on which the territorial authority makes its decision under section 198H(1).
- (3) In the report, the territorial authority may—

- (a) address issues that are set out in section 168A(3) or 189A(10) to the extent that they are relevant to the requirement; and
  - (b) suggest conditions that it considers should be imposed if the Environment Court confirms the requirement (with or without modifications).
- (4) As soon as is reasonably practicable after the report is prepared, the territorial authority must provide a copy to every person who made a submission on the requirement.

Section 198J: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **198K Environment Court decides**

- (1) If the territorial authority continues to want the requirement to be determined by the Environment Court, the authority must,—
  - (a) within 10 working days after preparing the report, lodge with the Environment Court a notice of motion in the prescribed form specifying the orders sought and the grounds upon which the application is made, and a supporting affidavit as to the matters giving rise to the application; and
  - (b) as soon as is reasonably practicable after lodging the notice of motion, serve a copy of the notice of motion and affidavit on every person who made a submission to the territorial authority on the requirement; and
  - (c) tell the Registrar of the Environment Court when the copies have been served.
- (2) The territorial authority must, without delay, provide the Environment Court with—
  - (a) the requirement to which the notice of motion relates; and
  - (b) the territorial authority's report on the requirement; and
  - (c) all the submissions on the requirement that the territorial authority received; and
  - (d) all the information and reports on the requirement that the territorial authority was supplied with.
- (3) Section 274 applies to the notice of motion.
- (4) Part 11 applies to proceedings under this section.

- (5) If considering a matter that is a notice of requirement for a designation or to alter a designation, the court—
- (a) must have regard to the matters set out in section 171(1) and comply with section 171(1A) as if it were a territorial authority; and
  - (b) may—
    - (i) cancel the requirement; or
    - (ii) confirm the requirement; or
    - (iii) confirm the requirement, but modify it or impose conditions on it as the court thinks fit; and
  - (c) may waive the requirement for an outline plan to be submitted under section 176A.
- (6) If considering a matter that is a notice of requirement for a heritage order or to alter a heritage order, the court—
- (a) must have regard to the matters set out in section 191(1); and
  - (b) may—
    - (i) cancel the requirement; or
    - (ii) confirm the requirement; or
    - (iii) confirm the requirement, but modify it or impose conditions on it as the court thinks fit (including a condition that the heritage protection authority reimburse the owner of the place concerned for any additional costs of upkeep of the place resulting from the making or the modifying of the order).

Section 198K: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **198L Residual powers of territorial authority**

The territorial authority that would have dealt with the requirement had the Environment Court not done so under section 198K has all the functions, duties, and powers in relation to the designation or heritage order resulting from the requirement as if it had dealt with the requirement itself.

Section 198L: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**198M When territorial authority must deal with requirement**

- (1) This section applies when—
  - (a) a territorial authority prepares a report under section 198J; and
  - (b) the territorial authority does not lodge a notice of motion with the Environment Court under section 198K(1); and
  - (c) the territorial authority continues to want the requirement dealt with.
- (2) The territorial authority must deal with the requirement.

Section 198M: inserted, on 1 October 2009, by section 119 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **Part 9**

### **Water conservation orders**

**199 Purpose of water conservation orders**

- (1) Notwithstanding anything to the contrary in Part 2, the purpose of a water conservation order is to recognise and sustain—
  - (a) outstanding amenity or intrinsic values which are afforded by waters in their natural state;
  - (b) where waters are no longer in their natural state, the amenity or intrinsic values of those waters which in themselves warrant protection because they are considered outstanding.
- (2) A water conservation order may provide for any of the following:
  - (a) the preservation as far as possible in its natural state of any water body that is considered to be outstanding;
  - (b) the protection of characteristics which any water body has or contributes to, and which are considered to be outstanding,—
    - (i) as a habitat for terrestrial or aquatic organisms;
    - (ii) as a fishery;
    - (iii) for its wild, scenic, or other natural characteristics;
    - (iv) for scientific and ecological values:

- (v) for recreational, historical, spiritual, or cultural purposes:
- (c) the protection of characteristics which any water body has or contributes to, and which are considered to be of outstanding significance in accordance with tikanga Maori.

## **200 Meaning of water conservation order**

In this Act, the term **water conservation order** means an order made under section 214 for any of the purposes set out in section 199 and that imposes restrictions or prohibitions on the exercise of regional councils' powers under paragraphs (e) and (f) of section 30(1) (as they relate to water) including, in particular, restrictions or prohibitions relating to—

- (a) the quantity, quality, rate of flow, or level of the water body; and
- (b) the maximum and minimum levels or flow or range of levels or flows, or the rate of change of levels or flows to be sought or permitted for the water body; and
- (c) the maximum allocation for abstraction or maximum contaminant loading consistent with the purposes of the order; and
- (d) the ranges of temperature and pressure in a water body.

## **201 Application for water conservation order**

- (1) Any person may, upon payment of any prescribed fee, apply to the Minister for the making of a water conservation order in respect of any water body.
- (2) An application under subsection (1) shall—
  - (a) identify the water body concerned; and
  - (b) state the reasons for the application with reference, where practicable, to the matters set out in sections 199, 200, and 207; and
  - (c) describe the provisions which, in the applicant's opinion, should be included in a water conservation order and the effect that such provisions would have on the water body.

- (3) The Minister may by notice in writing require the applicant to supply such further information in respect of the application as the Minister considers necessary.

**202 Minister's obligations upon receipt of application**

- (1) After receipt of an application (and any further information required by the Minister) under section 201 and after making such inquiry in respect of the application as the Minister considers necessary, the Minister shall as soon as practicable either—
  - (a) appoint a special tribunal to hear and report on the application; or
  - (b) reject the application—and notify the applicant of his or her decision, and where the application is rejected, of his or her reasons for the rejection.
- (2) Before appointing a special tribunal under subsection (1)(a), the Minister shall, where appropriate, consult with the Minister of Maori Affairs and the Minister of Conservation regarding the membership of the tribunal.

**203 Special tribunal**

- (1) A special tribunal appointed under section 202 shall—
  - (a) comprise no fewer than 3, and no more than 5, members; and
  - (b) have a chairperson appointed either by the Minister or, if the Minister declines to do so, by the members.
- (2) Every special tribunal shall be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951 and there may, if the Minister so directs, be paid to any member of a special tribunal, out of money appropriated by Parliament for the purpose,—
  - (a) remuneration by way of fees, salary, or allowances in accordance with that Act; and
  - (b) travelling allowances and travelling expenses in accordance with that Act in respect of time spent travelling in the service of the tribunal—and the provisions of that Act apply accordingly.

- (3) A member of a special tribunal is not liable for anything the member does, or omits to do, in good faith in performing or exercising the functions, duties, and powers of the tribunal.

Section 203(3): added, on 1 October 2009, by section 120 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **204 Public notification of application**

- (1) As soon as practicable after its appointment, a special tribunal shall ensure that—
- (a) notice of the application is published in—
    - (i) a newspaper circulating in the area in which the water body to which the application relates is situated; and
    - (ii) a daily newspaper in each of the cities of Auckland, Wellington, Christchurch, and Dunedin; and
  - (b) such other public notification of the application as the tribunal considers appropriate is given; and
  - (c) notice of the application is served on—
    - (i) the applicant; and
    - (ii) the relevant regional council; and
    - (iii) the relevant territorial authorities; and
    - (iv) the relevant iwi authorities; and
    - (v) such persons as the tribunal considers appropriate.
- (2) Every notice for the purposes of this section shall be in the prescribed form and shall state—
- (a) a description of the application, and where the application and any relevant information held by the special tribunal may be viewed; and
  - (b) that submissions on the application may be made in writing by any person; and
  - (c) the effect of section 205(3); and
  - (d) that the matters to be considered by the tribunal may be wider than the matters raised in the application; and
  - (e) the closing date for the receipt by the tribunal of such submissions; and
  - (f) the address for service of the tribunal and each applicant.



- (3) Section 92 shall, with all necessary modifications, apply in respect of a water conservation order as if—
  - (a) every reference therein to a consent authority were a reference to the special tribunal; and
  - (b) every reference therein to a consent were a reference to the order.

**205 Submissions to special tribunal**

- (1) Any person may make submissions to the special tribunal about an application which is notified in accordance with section 204.
- (2) Sections 37, 96(5) and (6), and 98 shall, with all necessary modifications, apply in respect of every submission made under subsection (1) as if—
  - (a) every reference therein to a consent authority were a reference to the tribunal; and
  - (b) every reference therein to a consent were a reference to an order; and
  - (c) the reference in section 96(6)(a) to section 97 were a reference to subsection (7) of this section.
- (3) Any person who supports the making of a water conservation order but who would prefer—
  - (a) that the order instead preserve a different but related water body in the same catchment; or
  - (b) that different features and qualities of the water body be preserved,—shall endeavour, in his or her submission,—
  - (c) to make that preference known to the tribunal; and
  - (d) to specify the reasons for the preference, referring, where practicable, to the matters set out in sections 199, 200, and 207; and
  - (e) to describe the provisions which, in the person's opinion, should be included in the water conservation order and the effect that those provisions would have on the water body.
- (4) Any submission that does not contain all the matters referred to in subsection (3) may nevertheless be considered by the tribunal.

- (5) Any person who makes a submission opposing the making of an order shall specify the reasons why he or she considers the proposed order is not justified in terms of section 199 and section 207.
- (6) The special tribunal may, by notice in writing, require any person making a submission to supply such further information in respect of the submission as the special tribunal considers necessary.
- (7) The closing date for serving submissions on a special tribunal is the 20th working day after notification of the application under section 204 is complete or such later date as is notified under section 37.

Section 205(2): amended, on 1 October 2009, by section 121(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 205(2)(b): amended, on 1 October 2009, by section 121(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 205(2)(c): added, on 1 October 2009, by section 121(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **206 Conduct of hearing**

- (1) The Minister shall, without delay, provide a special tribunal with the application in respect of which it has been appointed and any other relevant information received or held by the Minister.
- (2) *[Repealed]*
- (3) Sections 39 to 42 and 99 to 100 and 101 shall, with all necessary modifications, apply in respect of an application to a special tribunal as if—
  - (a) every reference in those sections to a consent authority were a reference to the special tribunal; and
  - (b) every reference in those sections to a resource consent were a reference to a water conservation order.
- (4) Without limiting sections 39 to 42, and 99, 100, and 101(1), (2), and (3), every inquiry shall be held in public at a place determined by the special tribunal as being near to the water body to which the application relates.

Section 206(2): repealed, on 1 October 2009, by section 122(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 206(3): amended, on 1 October 2009, by section 122(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **207 Matters to be considered**

In considering an application for a water conservation order, a special tribunal shall have particular regard to the purpose of a water conservation order and the other matters set out in section 199 and shall also have regard to—

- (a) the application and all submissions; and
- (b) the needs of primary and secondary industry, and of the community; and
- (c) the relevant provisions of every national policy statement, New Zealand coastal policy statement, regional policy statement, regional plan, district plan, and any proposed plan.

Section 207: amended, on 7 July 1993, by section 110(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 207(c): amended, on 7 July 1993, by section 110(2) of the Resource Management Amendment Act 1993 (1993 No 65).

## **208 Special tribunal to report on application**

- (1) As soon as reasonably practicable, a special tribunal shall prepare a report on the application for a water conservation order and give notice in accordance with subsection (2).
- (2) A notice for the purposes of subsection (1) shall—
  - (a) either include a draft water conservation order, or state that the tribunal recommends that the application be declined; and
  - (b) state the reasons for the tribunal's conclusion; and
  - (c) be sent to the applicant, the Minister, the regional council, the relevant territorial authorities, the relevant iwi authorities, and every person who made a submission on the application.

**209 Right to make submissions to Environment Court**

- (1) Any of the following persons may make a submission to the Environment Court in accordance with subsection (2) in respect of the whole or any part of a report of a special tribunal under section 208:
- (a) the applicant for the proposed water conservation order to which the report relates;
  - (b) any person who made a submission to the special tribunal under section 205;
  - (c) any other person to whom the Environment Court grants leave to make a submission on the grounds that the person could not reasonably have been expected to know that the report of the special tribunal would affect the person or an aspect of the public interest which that person represents.
- (2) A submission shall be lodged with the Environment Court within 15 working days of receipt of the notification of the decision in accordance with section 208(2).
- (3) A person who makes a submission shall, within 5 working days of the submission being lodged with the Environment Court, serve a copy of it on the applicant for the proposed water conservation order, the Minister, the regional council, the relevant territorial authorities, the relevant iwi authorities, every person who made a submission on the application, and every other person known by the person making the submission to have made a submission to the Environment Court.

Section 209 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 209(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 209(1)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 209(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 209(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**210 Environment Court to hold inquiry**

If 1 or more submissions are lodged with the Environment Court in accordance with section 209, the court shall conduct a

public inquiry in respect of the report to which the submissions relate.

Section 210 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 210: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **211 Who may be heard at inquiry**

The following persons have the right to be heard in person or be represented by another person at an inquiry conducted by the Environment Court under section 210:

- (a) the applicant for the proposed water conservation order to which the inquiry relates:
- (b) the Minister:
- (c) the regional council or territorial authority whose region or district may be affected by the proposed water conservation order:
- (d) every person who made a submission to the special tribunal under section 205:
- (e) any person who is granted leave to make a submission to the Environment Court under section 209(1)(c).

Section 211: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 211(e): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **212 Matters to be considered by Environment Court**

In conducting its inquiry, the Environment Court shall have particular regard to the purpose of a water conservation order and the other matters set out in section 199, and shall also have regard to—

- (a) the needs of primary and secondary industry, and of the community; and
- (b) the relevant provisions of every national policy statement, New Zealand coastal policy statement, regional policy statement, regional plan, district plan, and any proposed plan; and
- (c) the report of the special tribunal and any draft water conservation order; and

- (d) the application and all submissions lodged with the Environment Court; and
- (e) such other matters as the Environment Court thinks fit.

Section 212: substituted, on 7 July 1993, by section 111 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 212 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 212: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 212(d): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 212(e): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **213 Court's report**

- (1) On completion of its inquiry, the Environment Court shall make a report to the Minister recommending that the special tribunal's report be rejected, or accepted with or without modifications, and, where appropriate,—
  - (a) include a draft water conservation order; or
  - (b) recommend that the application for a water conservation order be declined.
- (2) The Environment Court shall ensure that its report is publicly notified in such manner as the Environment Court thinks fit.

Section 213: substituted, on 7 July 1993, by section 112 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 213 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 213(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 213(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **214 Making of water conservation order**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make a water conservation order in respect of any water body.
- (2) The Minister shall not make a recommendation for the purposes of subsection (1) except in accordance with—

- (a) the report of the special tribunal under section 208, where the Environment Court has not conducted an inquiry; or
- (b) where the Environment Court has conducted an inquiry, the report of the Environment Court under section 213.

Section 214(2)(a): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 214(2)(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **215 Minister's obligation to state reasons for not accepting recommendation**

If a special tribunal reports under section 208, or the Environment Court recommends under section 213, that a water conservation order be made and the Minister decides not to recommend that the Governor-General make the order, then the Minister shall,—

- (a) within 20 sitting days after making his or her decision, lay before the House of Representatives a written statement setting out the reasons for his or her decision; and
- (b) within 20 working days after making his or her decision, serve on the applicant and every person who made a submission to the special tribunal or the Environment Court, such a written statement.

Section 215: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 215(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **216 Revocation or variation of order**

- (1) Until the expiration of 2 years after the date a water conservation order is made under section 214 (or under the corresponding provision of any former enactment),—
  - (a) no application shall be made to the Minister to revoke any such order; and
  - (b) the Minister shall reject any application made under subsection (2) to amend any such order unless, after having regard to the purposes of the order and the restrictions and prohibitions imposed by the order, the

- Minister is satisfied that the amendment to which the application relates—
- (i) will have no more than a minor effect; or
  - (ii) is of a technical nature and would enable the order to better achieve any purpose for which it was made; and
- (c) no recommendation shall be made to the Governor-General—
- (i) to revoke any such order; or
  - (ii) to amend any such order unless the Minister is satisfied that the amendment is of a minor nature or of a technical nature which would enable the order to better achieve any purpose for which it was made.
- (2) Except as provided in subsection (1), any person may at any time apply to the Minister for the revocation or amendment of any water conservation order, and every such application shall state the reasons for the application.
- (3) Upon receipt of an application made under subsection (2), if—
- (a) the Minister is of the opinion that the application should not be rejected but that, by reason of the minor effect of the amendment, it is unnecessary to hold an inquiry; and
  - (b) the original applicant for the order (if that person can be located) and the regional council agree to the amendment—
- the Minister may recommend that the order be amended, and the Governor-General may, by Order in Council made on the recommendation of the Minister, amend the order accordingly.
- (4) Except as provided in subsection (3), an application made under subsection (2) for the revocation or amendment of a water conservation order shall be dealt with in the same manner as an application for such an order, and sections 201 to 215 shall apply accordingly.

**217 Effect of water conservation order**

- (1) No water conservation order shall affect or restrict any resource consent granted or any lawful use established in respect of the water body before the order is made.



- (2) Where a water conservation order is operative, the relevant consent authority—
- (a) shall not grant a water permit, coastal permit, or discharge permit if the grant of that permit would be contrary to any restriction or prohibition or any other provision of the order:
  - (b) shall not grant a water permit, a coastal permit, or a discharge permit to discharge water or contaminants into water, unless the grant of any such permit or the combined effect of the grant of any such permit and of existing water permits and discharge permits and existing lawful discharges into the water or taking, use, damming, or diversion of the water is such that the provisions of the water conservation order can remain without change or variation:
  - (c) shall, in granting any water permit, coastal permit, or discharge permit to discharge water or contaminants into water, impose such conditions as are necessary to ensure that the provisions of the water conservation order are maintained.

Section 217(2)(a): amended, on 7 July 1993, by section 113(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 217(2)(b): amended, on 7 July 1993, by section 113(2)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 217(2)(b): amended, on 7 July 1993, by section 113(2)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 217(2)(c): amended, on 7 July 1993, by section 113(3) of the Resource Management Amendment Act 1993 (1993 No 65).

## Part 10

### Subdivision and reclamations

#### 218 Meaning of subdivision of land

- (1) In this Act, the term **subdivision of land** means—
- (a) the division of an allotment—
    - (i) by an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of the allotment; or
    - (ii) by the disposition by way of sale or offer for sale of the fee simple to part of the allotment; or

- (iii) by a lease of part of the allotment which, including renewals, is or could be for a term of more than 35 years; or
    - (iv) by the grant of a company lease or cross lease in respect of any part of the allotment; or
    - (v) by the deposit of a unit plan, or an application to the Registrar-General of Land for the issue of a separate certificate of title for any part of a unit on a unit plan; or
  - (b) an application to the Registrar-General of Land for the issue of a separate certificate of title in circumstances where the issue of that certificate of title is prohibited by section 226,—
- and the term **subdivide land** has a corresponding meaning.
- (2) In this Act, the term **allotment** means—
- (a) any parcel of land under the Land Transfer Act 1952 that is a continuous area and whose boundaries are shown separately on a survey plan, whether or not—
    - (i) the subdivision shown on the survey plan has been allowed, or subdivision approval has been granted, under another Act; or
    - (ii) a subdivision consent for the subdivision shown on the survey plan has been granted under this Act; or
  - (b) any parcel of land or building or part of a building that is shown or identified separately—
    - (i) on a survey plan; or
    - (ii) on a licence within the meaning of Part 7A of the Land Transfer Act 1952; or
  - (c) any unit on a unit plan; or
  - (d) any parcel of land not subject to the Land Transfer Act 1952.
- (3) For the purposes of subsection (2), an allotment that is—
- (a) subject to the Land Transfer Act 1952 and is comprised in 1 certificate of title or for which 1 certificate of title could be issued under that Act; or
  - (b) not subject to that Act and was acquired by its owner under 1 instrument of conveyance—

shall be deemed to be a continuous area of land notwithstanding that part of it is physically separated from any other part by a road or in any other manner whatsoever, unless the division of the allotment into such parts has been allowed by a subdivision consent granted under this Act or by a subdivisional approval under any former enactment relating to the subdivision of land.

- (4) For the purposes of subsection (2), the balance of any land from which any allotment is being or has been subdivided is deemed to be an allotment.

Section 218(1)(a)(i): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 218(1)(a)(iii): substituted, on 1 August 2003, by section 69 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 218(1)(a)(v): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 218(1)(a)(v): amended, on 7 July 1993, by section 114(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 218(1)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 218(2)(b)(ii): amended, on 1 July 1994, pursuant to section 3 of the Land Transfer Amendment Act 1993 (1993 No 124).

Section 218(4): added, on 17 December 1997, by section 39 of the Resource Management Amendment Act 1997 (1997 No 104).

## **219 Information to accompany applications for subdivision consents**

*[Repealed]*

Section 219: repealed, on 1 August 2003, by section 70 of the Resource Management Amendment Act 2003 (2003 No 23).

## **220 Condition of subdivision consents**

- (1) Without limiting section 108 or any provision in this Part, the conditions on which a subdivision consent may be granted may include any 1 or more of the following:
- (a) where an esplanade strip is required under section 230, a condition specifying the provisions to be included in

the instrument creating the esplanade strip under section 232:

- (aa) a condition requiring an esplanade reserve to be set aside in accordance with section 236;
- (ab) a condition requiring the vesting of ownership of land in the coastal marine area or the bed of a lake or river in accordance with section 237A;
- (ac) a condition waiving the requirement for, or reducing the width of, an esplanade reserve or esplanade strip in accordance with section 230 or section 405A;
- (b) subject to subsection (2), a condition that any specified part or parts of the land being subdivided or any other adjoining land of the subdividing owner be—
  - (i) transferred to the owner of any other adjoining land and amalgamated with that land or any part thereof; or
  - (ii) amalgamated, where the specified parts are adjoining; or
  - (iii) amalgamated, whether the specified parts are adjoining or not, for any purpose specified in a district plan or necessary to comply with any requirement of the district plan; or
  - (iv) held in the same ownership, or by tenancy-in-common in the same ownership, for the purpose of providing legal access or part of the legal access to any proposed allotment or allotments in the subdivision;
- (c) a condition that any allotment be subject to a requirement as to the bulk, height, location, foundations, or height of floor levels of any structure on the allotments;
- (d) a condition that provision be made to the satisfaction of the territorial authority for the protection of the land or any part thereof, or of any land not forming part of the subdivision, against erosion, subsidence, slippage, or inundation from any source (being, in the case of land not forming part of the subdivision, subsidence, slippage, erosion, or inundation arising or likely to arise as a result of the subdividing of the land the subject of the subdivision consent):

- (e) a condition that filling and compaction of the land and earthworks be carried out to the satisfaction of the territorial authority:
  - (f) a condition requiring that any easements be duly granted or reserved:
  - (g) a condition requiring that any existing easements in respect of which the land is the dominant tenement and which the territorial authority considers to be redundant, be extinguished, or be extinguished in relation to any specified allotment or allotments.
- (2) For the purposes of subsection (1)(b)—
  - (a) where any condition requires land to be amalgamated, the territorial authority shall, subject to subsection (3), specify (as part of that condition) that such land be held in 1 certificate of title or be subject to a covenant entered into between the owner of the land and the territorial authority that any specified part or parts of the land shall not, without the consent of the territorial authority, be transferred, leased, or otherwise disposed of except in conjunction with other land; and
  - (b) land shall be regarded as adjoining other land notwithstanding that it is separated from the other land only by a road, railway, drain, water race, river, or stream.
- (3) Before deciding to grant a subdivision consent on a condition described in subsection (1)(b), the territorial authority shall consult with the Registrar-General of Land as to the practicality of that condition. If the Registrar-General of Land advises the territorial authority that it is not practical to impose a particular condition, the territorial authority shall not grant a subdivision consent subject to that condition, but may if it thinks fit grant a subdivision consent subject to such other conditions under subsection (1)(b) which the Registrar-General of Land advises are practical in the circumstances.

Section 220(1)(a): substituted, on 7 July 1993, by section 116 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 220(1)(aa): inserted, on 7 July 1993, by section 116 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 220(1)(ab): inserted, on 7 July 1993, by section 116 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 220(1)(ac): inserted, on 7 July 1993, by section 116 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 220(3): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **221 Territorial authority to issue a consent notice**

- (1) Where a subdivision consent is granted subject to a condition to be complied with on a continuing basis by the subdividing owner and subsequent owners after the deposit of a survey plan (not being a condition in respect of which a bond is required to be entered into by the subdividing owner, or a completion certificate is capable of being or has been issued), the territorial authority shall, for the purposes of section 224, issue a consent notice specifying any such condition.
- (2) Every consent notice must be signed by a person authorised by the territorial authority to sign consent notices.
- (3) At any time after the deposit of the survey plan,—
  - (a) the owner may apply to a territorial authority to vary or cancel any condition specified in a consent notice:
  - (b) the territorial authority may review any condition specified in a consent notice and vary or cancel the condition.
- (3A) Sections 88 to 121 and 127(4) to 132 apply, with all necessary modifications, in relation to an application made or review conducted under subsection (3).
- (4) Every consent notice shall be deemed—
  - (a) to be an instrument creating an interest in the land within the meaning of section 62 of the Land Transfer Act 1952, and may be registered accordingly; and
  - (b) to be a covenant running with the land when registered under the Land Transfer Act 1952, and shall, notwithstanding anything to the contrary in section 105 of the Land Transfer Act 1952, bind all subsequent owners of the land.
- (5) Where a consent notice has been registered under the Land Transfer Act 1952 and any condition in that notice has been varied or cancelled after an application or review under subsection (3) or has expired, the Registrar-General of Land shall, if he or she is satisfied that any condition in that notice has

been so varied or cancelled or has expired, make an entry in the register and on any relevant instrument of title noting that the consent notice has been varied or cancelled or has expired, and the condition in the consent notice shall take effect as so varied or cease to have any effect, as the case may be.

Section 221(2): substituted, on 1 October 2009, by section 123 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 221(3): substituted, on 10 August 2005, by section 92(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 221(3A): inserted, on 10 August 2005, by section 92(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 221(5): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 221(5): amended, on 10 August 2005, by section 92(2) of the Resource Management Amendment Act 2005 (2005 No 87).

## **222 Completion certificates**

- (1) Where under this Part, compliance with a condition of a subdivision consent is dependent on the completion by the owner of any work required by the territorial authority or on the making of a financial contribution (as defined in section 108(9)), the territorial authority may, for the purposes of section 224, issue a certificate to the effect that the owner has entered into a bond binding the owner to carry out and complete the work or make the financial contribution (as the case may be) to the satisfaction of the territorial authority within such period as the territorial authority may specify.
- (2) The territorial authority may from time to time extend any period specified by it under subsection (1), but any such extension shall not affect any security given for the performance of the bond.
- (3) The territorial authority may exercise all of the powers conferred upon a consent authority by section 108A as if the bond entered into under this section had been required as a condition of a subdivision consent.
- (4) The provisions of section 109 shall apply as if the bond entered into under this section had been required as a condition of a subdivision consent.

- (5) In this section, the term **work** includes anything, whether in the nature of works or otherwise, required by the territorial authority to be done by the owner as a condition of a subdivision consent; but does not include contributions of money or land (including esplanade reserves and esplanade strips) as a condition of a subdivision consent.

Section 222(1): amended, on 17 December 1997, by section 40(a) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 222(1): amended, on 17 December 1997, by section 40(b) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 222(3): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 222(5): amended, on 7 July 1993, by section 117 of the Resource Management Amendment Act 1993 (1993 No 65).

### *Approval and deposit of survey plans*

#### **223 Approval of survey plan by territorial authority**

- (1) An owner of any land may submit to a territorial authority for its approval, a survey plan in respect of that land if—
- (a) a subdivision consent has been obtained for the subdivision to which the survey plan relates, and that consent has not lapsed; or
  - (b) a certificate of compliance has been obtained, and that certificate has not lapsed.
- (1A) Within 10 working days after receiving a survey plan submitted to it under subsection (1), a territorial authority must either—
- (a) approve the survey plan; or
  - (b) decline the survey plan.
- (2) Subject to sections 237, 237A, 240, 241, and 243, a territorial authority shall approve a survey plan submitted to it under subsection (1) if it is satisfied that,—
- (a) where a subdivision consent has been obtained, the survey plan conforms with the subdivision consent; or
  - (b) where a certificate of compliance has been obtained, the survey plan conforms with the certificate of compliance.
- (3) The chief executive or an authorised officer of the territorial authority must certify that a survey plan has been approved under this section.



- (4) A certification under subsection (3) may be made either—
- (a) by signing the plan or a copy of it; or
  - (b) by any other means that—
    - (i) identifies the person giving the certification and links the certificate to the survey plan; and
    - (ii) is as reliable as is appropriate to the purposes of this section.
- (5) A certificate under subsection (3) is conclusive evidence that all roads, private roads, reserves, land vested in the authority in lieu of reserves, and private ways shown on the survey plan have been authorised and accepted by the territorial authority under this Act and under the Local Government Act 1974.
- (6) Nothing in subsection (3) affects any obligation of the subdividing owner under any condition of a subdivision consent or bond entered into relating to the subdivision.

Section 223(1A): inserted, on 1 August 2003, by section 71 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 223(2): amended, on 7 July 1993, by section 118 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 223(3): substituted, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 223(3): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 223(4): substituted, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 223(5): added, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 223(6): added, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **224 Restrictions upon deposit of survey plan**

No survey plan shall be deposited for the purposes of section 11(1)(a)(i) or (iii) unless—

- (a) *[Repealed]*
- (b) where land shown on the survey plan will vest in the Crown or a territorial authority, there is endorsed on the

survey plan or deposited with the Registrar-General of Land, written consent to the subdivision given by—

- (i) in the case of land subject to the Land Transfer Act 1952, every registered proprietor of an interest, including any encumbrance, in the land; or
  - (ii) in the case of land not subject to that Act, every person having an interest, including any encumbrance, in the land that is evidenced by an instrument registered under the Deeds Registration Act 1908; and
- (c) there is lodged with the Registrar-General of Land a certificate signed by the chief executive or other authorised officer of the territorial authority stating that, it has approved the survey plan under section 223 (which approval states the date of the approval), and all or any of the conditions of the subdivision consent have been complied with to the satisfaction of the territorial authority and that in respect of such conditions that have not been complied with—
- (i) a completion certificate has been issued in relation to such of the conditions to which section 222 applies;
  - (ii) a consent notice has been issued in relation to such of the conditions to which section 221 applies;
  - (iii) a bond has been entered into by the subdividing owner in compliance with any condition of a subdivision consent imposed under section 108(2)(b); and
- (d) there is lodged for registration with the Registrar-General of Land a consent notice in respect of any conditions of a kind referred to in paragraph (c)(ii); and
- (e) in relation to any unit plan, the requirements of the Unit Titles Act 1972 and the Unit Titles Amendment Act 1979 relating to the deposit of a unit plan have been complied with; and
- (f) in the case of a subdivision of land to be effected by the grant of a cross lease or company lease, or by the deposit of a unit plan, the territorial authority is satis-

fied on reasonable grounds that every existing building or part of an existing building (including any building or part thereof under construction) to which the cross lease, company lease, or unit title plan relates complies with or will comply with the provisions of the building code described in section 116A of the Building Act 2004, and a certificate signed by a person authorised by the territorial authority to sign such certificates is lodged with the Registrar-General of Land; and

- (g) where land is shown upon the survey plan to be subject to an esplanade strip, there is lodged for registration with the Registrar-General of Land an instrument creating that strip; and
- (h) less than 3 years has elapsed since the territorial authority approved the plan under section 223.

Section 224: amended, on 1 October 2009, by section 124(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 224(a): repealed, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 224(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 224(b)(i): amended, on 7 July 1993, by section 119(1)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 224(b)(ii): amended, on 7 July 1993, by section 119(1)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 224(c): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 224(c): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 224(c): amended, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 224(c): amended, on 7 July 1993, by section 119(2)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 224(c)(iii): amended, on 17 December 1997, by section 42(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 224(d): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 224(d): amended, on 7 July 1993, by section 119(2)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 224(e): amended, on 7 July 1993, by section 119(2)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 224(f): substituted, on 7 July 1993, by section 119(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 224(f): amended, on 1 October 2009, by section 124(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 224(f): amended, on 14 April 2005, by section 14(2) of the Building Amendment Act 2005 (2005 No 31).

Section 224(f): amended, on 31 March 2005, by section 414 of the Building Act 2004 (2004 No 72).

Section 224(f): amended, on 17 December 1997, by section 42(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 224(g): added, on 7 July 1993, by section 119(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 224(g): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 224(g): amended, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Section 224(h): added, on 1 June 2002, by section 65(4) of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

## **225 Agreement to sell land or building before deposit of plan**

- (1) Any agreement to sell any land or any building or part of any building that constitutes a subdivision and is made before the appropriate survey plan is approved under section 223, shall be deemed to be made subject to a condition that the survey plan will be deposited under the Land Transfer Act 1952 or in the Deeds Register Office, as the case may be; and no such agreement is illegal or void by reason that it was entered into before the survey plan was deposited.
- (2) Subject to subsection (1), any agreement to sell any allotment in a proposed subdivision made before the appropriate survey plan is approved under section 223 shall be deemed to be made subject to the following conditions:
  - (a) that the purchaser may, by notice in writing to the vendor, cancel the agreement at any time before the end of 14 days after the date of the making of the agreement:

- (b) that the purchaser may, at any time after the expiration of 2 years after the date of granting of the resource consent or 1 year after the date of the agreement, whichever is the later, by notice in writing to the vendor, rescind the contract if the vendor has not made reasonable progress towards submitting a survey plan to the territorial authority for its approval or has not deposited the survey plan within a reasonable time after the date of its approval.
- (3) An agreement may be rescinded under subsection (2) notwithstanding that the parties cannot be restored to the position that they were in immediately before the agreement was made, and in any such case the rights and obligations of each party shall, in the absence of agreement between the parties, be as determined by a court of competent jurisdiction.

**226 Restrictions upon issue of certificates of title for subdivision**

- (1) The Registrar-General of Land shall not issue a certificate of title for any land that is shown as a separate allotment on a survey plan (being a certificate issued to give effect to the subdivision shown on that survey plan), unless he or she is satisfied, after due inquiry, that—
  - (a) the plan has been deposited in accordance with section 224 or has been approved by the Chief Surveyor for the purposes of section 228 and the provisions of section 228(2) have been complied with; or
  - (b) the plan has been deposited in accordance with section 306 of the Local Government Act 1974 or was a Crown plan to which section 306(7) of the Local Government Act 1974 applied; or
  - (ba) the plan has been approved under Part 25 of the Municipal Corporations Act 1954; or
  - (bb) the plan has been approved under Part 2 of the Counties Amendment Act 1961; or
  - (bc) the plan did not require the approval of the Council under Part 2 of the Counties Amendment Act 1961 and was deposited under the Land Transfer Act 1952 after the said Part 2 came into force; or

- (c) the plan has been deposited in accordance with the Unit Titles Act 1972; or
  - (d) the certificate of title is issued to enable effect to be given to any agreement for sale and purchase or agreement to lease or other contract to create an interest in land or a building or part of a building made before the commencement of this Act; or
  - (e) the territorial authority has given a certificate signed by the principal administrative officer or other authorised officer to the effect—
    - (i) that there is no district plan for the area to which the survey plan relates, and that the allotment is in accordance with the requirements and provisions of the proposed district plan; or
    - (ii) that the allotment is in accordance with the requirements and provisions of the district plan and the proposed district plan (if any) for the area to which the survey plan relates; or
    - (iii) that the allotment is in accordance with a permission or permissions granted under Part 2 or Part 4 of the Town and Country Planning Act 1977.
- (2) Nothing in section 11 shall apply to the issue of a certificate of title pursuant to subsection (1).

Section 226 heading: amended, on 7 July 1993, by section 120 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 226(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 226(1)(ba): inserted, on 7 July 1993, by section 120 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 226(1)(bb): inserted, on 7 July 1993, by section 120 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 226(1)(bc): inserted, on 7 July 1993, by section 120 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 226(1)(e): amended, on 1 August 2003, by section 72 of the Resource Management Amendment Act 2003 (2003 No 23).

## **226A Savings in respect of cross leases, company leases, and retirement village leases**

- (1) Nothing in section 11 or this Part shall apply—

- (a) to the registration of a memorandum of cross lease or company lease, in renewal or in substitution for a cross lease or company lease, and the issue of a certificate of title therefor in respect of a building or part of a building shown on a plan—
    - (i) deposited or lodged in the land registry office for cross lease or company lease purposes before the commencement of this Act; or
    - (ii) to which paragraph (b) or paragraph (c) of section 408(1) applies; or
  - (b) to the registration of a lease of a residence within retirement village premises shown on a plan deposited before the commencement of this Act or the issue of a certificate of title therefor; or
  - (c) to the renewal or substitution of a company lease in respect of a building or part of a building if the original company lease was in existence before the commencement of this Act (whether or not the renewal or substitution is part of the original company lease or a subsequent company lease).
- (2) The Registrar-General of Land shall not register a lease or issue a certificate of title for a residence within retirement village premises, in respect of a plan deposited before the commencement of this Act, unless a certificate is endorsed on the memorandum of lease, and signed by the lessor or by a Solicitor of the High Court, that subsection (1)(b) applies.
- (3) For the purposes of this section, **retirement village premises** means premises (including any land and associated buildings) within a complex of premises for occupation as residences predominantly by persons who are retired and any spouses or partners of such persons.

Section 226A: inserted, on 7 July 1993, by section 121 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 226A(1)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 226A(1)(c): added, on 1 August 2003, by section 73 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 226A(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **227 Cancellation of prior approvals**

### **(1) Where—**

- (a) before or after the date of commencement of this Act, a survey plan has been deposited under the Land Transfer Act 1952 or under any other authority or in the Deeds Register Office; and
- (b) a survey plan of the same land is deposited in accordance with section 224,—

the approval given to the first-mentioned survey plan on or before the date of deposit of the second-mentioned survey plan shall, except as to conditions to which sections 221, and 243 or the equivalent provisions of any former enactment apply,—

- (c) be deemed to be cancelled; or
- (d) where the land in the second-mentioned survey plan is part only of the land in the first-mentioned survey plan, be deemed to be cancelled so far as it relates to the land in the second-mentioned survey plan.

### **(2) Subsection (1) does not apply to the deposit of a unit plan, or to a survey plan which gives effect to the grant of a lease to which section 218(1)(a)(iii) applies, or a cross lease or company lease.**

Section 227(1): amended, on 17 December 1997, by section 43 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 227(2): added, on 7 July 1993, by section 122 of the Resource Management Amendment Act 1993 (1993 No 65).

## **228 Subdivision by the Crown**

### **(1) Where a survey plan of a subdivision by or on behalf of a Minister of the Crown of land not subject to the Land Transfer Act 1952 has been approved by a territorial authority under section 223,—**

- (a) subject to subsection (2), the approval by the Chief Surveyor of the land district in which the land is situated of the survey plan of the subdivision has legal effect as if it were the deposit of a survey plan in accordance with section 224; and



- (b) the land is then deemed to be subject to the Land Transfer Act 1952 and, subject to subsection (2), a certificate of title for the land may be issued by the Registrar-General of Land in the name of Her Majesty the Queen at the request of—
  - (i) the Director-General of Conservation if the land is a conservation area within the meaning of the Conservation Act 1987, or a reserve under the Reserves Act 1977, or a national park under the National Parks Act 1980, or a wildlife sanctuary or wildlife refuge under the Wildlife Act 1953; or
  - (ii) the Surveyor-General or other officer authorised in writing by the Surveyor-General in every other case—as if section 16 of the Land Transfer Act 1952 applied.
- (2) Section 224 shall apply, with all necessary modifications, to a survey plan to which this section applies and the Registrar-General of Land shall not issue a certificate of title for any land that is shown as a separate allotment on a survey plan approved by a Chief Surveyor unless section 224 is complied with.

Section 228(1): amended, on 7 July 1993, by section 123(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 228(1)(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 228(1)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 228(1)(b)(i): amended, on 7 July 1993, by section 123(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 228(1)(b)(ii): amended, on 7 July 1993, by section 123(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 228(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### *Esplanade reserves*

#### **229 Purposes of esplanade reserves and esplanade strips**

An esplanade reserve or an esplanade strip has 1 or more of the following purposes:

- (a) to contribute to the protection of conservation values by, in particular,—
  - (i) maintaining or enhancing the natural functioning of the adjacent sea, river, or lake; or
  - (ii) maintaining or enhancing water quality; or
  - (iii) maintaining or enhancing aquatic habitats; or
  - (iv) protecting the natural values associated with the esplanade reserve or esplanade strip; or
  - (v) mitigating natural hazards; or
- (b) to enable public access to or along any sea, river, or lake; or
- (c) to enable public recreational use of the esplanade reserve or esplanade strip and adjacent sea, river, or lake, where the use is compatible with conservation values.

Section 229: substituted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

### **230 Requirement for esplanade reserves or esplanade strips**

- (1) For the purposes of sections 77, 229 to 237H, and 405A, the size of any allotment shall be determined before any esplanade reserve or esplanade strip is set aside or created, as the case may be.
- (2) The provisions of sections 229 to 237H shall only apply where section 11(1)(a) applies to the subdivision.
- (3) Except as provided by any rule in a district plan made under section 77(1), or a resource consent which waives, or reduces the width of, the esplanade reserve, where any allotment of less than 4 hectares is created when land is subdivided, an esplanade reserve 20 metres in width shall be set aside from that allotment along the mark of mean high water springs of the sea, and along the bank of any river or along the margin of any lake, as the case may be, and shall vest in accordance with section 231.
- (4) For the purposes of subsection (3), a **river** means a river whose bed has an average width of 3 metres or more where the river flows through or adjoins an allotment; and a **lake** means a lake whose bed has an area of 8 hectares or more.
- (5) If any rule made under section 77(2) so requires, but subject to any resource consent which waives, or reduces the width of,

the esplanade reserve or esplanade strip, where any allotment of 4 hectares or more is created when land is subdivided, an esplanade reserve or esplanade strip shall be set aside or created from that allotment along the mark of mean high water springs of the sea and along the bank of any river and along the margin of any lake, and shall vest in accordance with section 231 or be created in accordance with section 232, as the case may be.

Section 230: substituted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 230(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **231 Esplanade reserves to vest on subdivision**

- (1) An esplanade reserve required under section 230 or section 236—
  - (a) shall be set aside as a local purpose reserve for esplanade purposes under the Reserves Act 1977; and
  - (b) shall vest in and be administered by the territorial authority.
- (2) Nothing in this Part shall prevent the change of classification or purpose of an esplanade reserve in accordance with the Reserves Act 1977 or the exercise of any other power under that Act.
- (3) Every survey plan submitted to the territorial authority under section 223 shall show the area of land to be so set aside.

Section 231: substituted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

### **232 Creation of esplanade strips**

- (1) An esplanade strip of the width specified in a rule in a district plan made under section 77 may be created for any purpose specified in section 229 by the registration of an instrument between the territorial authority, and the subdividing owner, prepared in accordance with this section.
- (2) Every such instrument shall—
  - (a) be in accordance with Schedule 10; and
  - (b) be in the prescribed form; and

- (c) be created in favour of the territorial authority; and
  - (d) create an interest in land, and may be registered under the Land Transfer Act 1952; and
  - (e) when registered with the Registrar-General of Land, run with and bind the land that is subject to the instrument; and
  - (f) bind every mortgagee or other person having an interest in the land, without that person's consent.
- (3) Where an esplanade strip is created, that strip may be closed to public entry under section 237C.
- (4) When deciding under section 220(1)(a) which matters shall be provided for in the instrument, the territorial authority shall consider—
- (a) which provisions in clauses 2, 3, and 7 of Schedule 10 (if any) to modify (including the imposition of conditions) or to exclude from the instrument; and
  - (b) any other matters that the territorial authority considers appropriate to include in the instrument.
- (5) When deciding under subsection (4) which provisions (if any) to modify or exclude or what other matters to include, the territorial authority shall consider—
- (a) any relevant rules in the district plan; and
  - (b) the provisions and other matters included in any existing instrument for an esplanade strip, or easement for an access strip, in the vicinity; and
  - (c) the purpose or purposes of the strip, including the needs of potential users of the strip; and
  - (d) the use of the strip and adjoining land by the owner and occupier; and
  - (e) the use of the river, lake, or coastal marine area within or adjacent to the strip; and
  - (f) the management of any reserve in the vicinity.

Section 232: substituted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 232(2)(e): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**233 Effect of change to boundary of esplanade strip**

- (1) Where, for any reason, the mark of any mean high water springs or the bank of any river or the margin of any lake alters, and the alteration affects an existing esplanade strip within an allotment, a new esplanade strip coinciding with such alteration shall be deemed to have been created simultaneously with each and every such alteration within the allotment.
- (2) Any instrument creating any existing esplanade strip shall continue in existence and shall apply to a new esplanade strip created under subsection (1) without alteration, except as to location of the strip.
- (3) Every esplanade strip created by subsection (1) shall be of such dimensions and be situated and subject to the same conditions as if it had been created by an instrument continued under subsection (2) and shall extinguish in whole or in part, as the case may require, the existing esplanade strip which would have continued but for the alterations referred to in subsection (1).
- (4) Subject to this section, the provisions of this Act shall apply to every esplanade strip created by subsection (1).
- (5) Any person having an interest in land affected by the new esplanade strip created under subsection (1) shall be bound by the instrument applying to that strip.

Section 233: substituted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

**234 Variation or cancellation of esplanade strips**

- (1) The registered proprietor of any land subject to an esplanade strip may apply to the territorial authority to vary or cancel the instrument creating the strip.
- (2) The application shall include—
  - (a) a description of the strip and its location; and
  - (b) an assessment of the effects of varying or cancelling the strip.
- (3) The territorial authority may at any time initiate a proposal to vary or cancel the instrument creating an esplanade strip by preparing a statement covering the matters specified in subsection (2); and references to an application in this section shall include a statement made under this subsection.

- (4) Upon receipt of an application under subsection (1) by the territorial authority, or after the preparation of a statement by the territorial authority under subsection (3), the provisions of sections 127 to 132 shall apply as appropriate, with all necessary modifications.
- (5) The territorial authority, when considering an application to vary or cancel any instrument creating an esplanade strip shall have regard to—
- (a) those matters set out in section 104(1), with all necessary modifications; and
  - (b) the purpose or purposes, as set out in section 229, for which the strip was created; and
  - (c) any change in circumstances which has made the strip or any of the conditions in the instrument creating the strip inappropriate or unnecessary.
- (6) After considering the application for variation or cancellation of an instrument creating an esplanade strip, the territorial authority—
- (a) may grant the application, with or without modifications; or
  - (b) may decline the application.
- (7) When all the appeals (if any) are finally determined, the territorial authority shall lodge for registration with the Registrar-General of Land a certificate, signed by the chief executive or other authorised officer of the territorial authority, specifying the variations to the instrument or that the instrument is cancelled, as the case may be.
- (8) The Registrar-General of Land shall make an appropriate entry in the register and on the instrument noting that the instrument has been varied or cancelled, and the instrument shall take effect as so varied or cease to have any effect, as the case may be.

Section 234: substituted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 234(7): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 234(7): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 234(8): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**235 Creation of esplanade strips by agreement**

- (1) An esplanade strip may at any time be created for any of the purposes specified in section 229 by agreement between the registered proprietor of any land and the local authority, and the provisions of sections 229, 232, 233, 234, 237(2), and 237C shall apply, with all necessary modifications.
- (2) No instrument for an esplanade strip by agreement may be registered with the Registrar-General of Land unless every person having a registered interest in the land has endorsed his or her consent on the instrument.

Section 235: substituted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 235(1): amended, on 1 August 2003, by section 74 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 235(1): amended, on 17 December 1997, by section 44 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 235(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**236 Where land previously set aside or reserved**

Where—

- (a) land along the mean high water mark or the mark of mean high water springs of the sea, or along the bank of any river, or along the margin of any lake, has—
  - (i) been set aside as an esplanade reserve under this Part, or has been reserved for the purpose specified in section 289 of the Local Government Act 1974, or for public purposes pursuant to section 29(1) of the Counties Amendment Act 1961 or section 11 of the Land Subdivision in Counties Act 1946; or
  - (ii) been set aside or reserved for public recreation purposes pursuant to any other enactment (whether passed before or after the commencement of this Act and whether or not in force at the commencement of this Act); or

- (iii) been reserved from sale or other disposition pursuant to section 24 of the Conservation Act 1987, or section 58 of the Land Act 1948, or the corresponding provisions of any former Act; and
- (b) a survey plan of land adjoining that land previously set aside or reserved is submitted to the territorial authority under section 223—

then, notwithstanding that any land of the kind referred to in paragraph (a) has been previously reserved or set aside but subject to any rule in a district plan or any resource consent, there may, as a condition of consent under section 220(1)(aa), be set aside on the survey plan an esplanade reserve adjoining the land previously set aside or reserved, which shall—

- (c) be of a width that is the difference between the width of the land previously set aside or reserved and—
  - (i) the width required by a rule in a district plan under section 77 for an esplanade reserve, if any, where any allotment 4 hectares or more is created when land is subdivided; or
  - (ii) the width required by a rule in a district plan under section 77 for an esplanade reserve, if any, where any allotment less than 4 hectares is created when land is subdivided; or
  - (iii) where any allotment less than 4 hectares is created when land is subdivided, and there is no rule in a district plan under section 77, then 20 metres as required under section 230.

Section 236: substituted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 236: amended, on 17 December 1997, by section 45 of the Resource Management Amendment Act 1997 (1997 No 104).

### **237 Approval of survey plans where esplanade reserve or esplanade strips required**

- (1) Subject to subsection (3), the territorial authority shall not approve a survey plan unless any esplanade reserve or esplanade strip required under this Part is shown on the survey plan.
- (2) Notwithstanding anything in the Land Transfer Act 1952, an esplanade strip shall not be required to be surveyed, but where



an esplanade strip is shown on the survey plan, it shall be clearly identified in such manner as the Chief Surveyor considers appropriate.

(3) Where—

- (a) an esplanade reserve or esplanade strip is required under this Part in respect of a subdivision which is to be effected by the grant of a cross lease or company lease or by the deposit of a unit plan; and
- (b) it is not practical to show the esplanade reserve or esplanade strip on the survey plan submitted for approval under section 223 (in this section referred to as the **primary survey plan**)—

the territorial authority, after consultation with the Registrar-General of Land, shall not approve the primary survey plan until a separate survey plan showing the esplanade reserve or esplanade strip has been prepared and submitted to the territorial authority for approval under this section.

(4) Where the territorial authority approves a separate survey plan under subsection (3)—

- (a) a memorandum to that effect shall be endorsed on the primary survey plan and the separate survey plan; and
- (b) the Registrar-General of Land shall not deposit the primary survey plan and (in respect of a subdivision by the Crown) the Registrar-General of Land shall not issue a certificate of title for any separate allotment on the primary survey plan approved by the Chief Surveyor for the purposes of section 228, unless the separate survey plan on which the esplanade reserve or esplanade strip is shown is deposited prior to, or at the same time as, the primary survey plan.

(5) Subject to this section, nothing in section 11 or this Part applies to a separate survey plan approved by a territorial authority under this section.

Section 237: substituted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 237(3): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 237(4)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**237A Vesting of land in common marine and coastal area or bed of lake or river**

- (1) Where a survey plan is submitted to a territorial authority in accordance with section 223, and any part of the allotment being subdivided is the bed of a river or lake or is within the coastal marine area, the survey plan shall—
  - (a) show as vesting in the territorial authority—
    - (i) such part of the allotment as forms part of the bed of a river or lake and adjoins an esplanade reserve shown as vesting in the territorial authority; or
    - (ii) such part of the allotment as forms part of the bed of a river or lake and is required to be so vested as a condition of a resource consent:
  - (b) show any part of the allotment that is in the coastal marine area as part of the common marine and coastal area.
- (2) Any requirement to vest the bed under subsection (1)(a)(i) shall be subject to any rule in a district plan or any resource consent which provides otherwise.

Section 237A: inserted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 237A heading: substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 237A(1)(b): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 237A(2): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**237B Access strips**

- (1) A local authority may agree with the registered proprietor of any land to acquire an easement over the land, and may agree upon the conditions upon which such an easement may be enjoyed.
- (2) Any such easement shall—
  - (a) be executed by the local authority and the registered proprietor; and
  - (b) be in the prescribed form; and

- (c) contain the relevant provisions in accordance with Schedule 10.
- (3) When deciding which matters shall be provided for in the easement, the parties shall consider—
  - (a) which provisions in clauses 2, 3, and 7 of Schedule 10 (if any) to modify (including by the imposition of conditions) or to exclude from the easement; and
  - (b) any other matters that the local authority and registered proprietor consider appropriate to include in the easement.
- (4) When deciding under subsection (3) which provisions (if any) to modify or exclude or what other matters to include, the parties shall consider—
  - (a) any relevant rules in the district plan; and
  - (b) the provisions and other matters included in any existing instrument for an esplanade strip, or easement for an access strip, in the vicinity; and
  - (c) the purpose of the strip, including the needs of potential users of the strip; and
  - (d) the use of the strip and adjoining land by the owner and occupier; and
  - (e) where appropriate, the use of the river, lake, or coastal marine area within or adjacent to the access strip; and
  - (f) the management of any reserve in the vicinity.
- (5) Any such easement shall take effect when registered at the office of the Registrar-General of Land.
- (6) An access strip may be closed to public entry under section 237C.
- (7) No easement for an access strip may be registered with the Registrar-General of Land unless every person having a registered interest in the land has endorsed his or her consent on the easement.
- (8) The registered proprietor and the local authority may, by agreement, vary or cancel the easement if the matters in subsection (4) and any change in circumstances have been taken into account; and in any such case the provisions of section 234(7) and (8) shall apply, with all necessary modifications.

Section 237B: inserted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 237B(5): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 237B(7): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **237C Closure of strips to public**

- (1) An esplanade strip or access strip may be closed to the public for the times and periods specified in the instrument or easement under Schedule 10, or by the local authority during periods of emergency or public risk likely to cause loss of life, injury, or serious damage to property.
- (2) The local authority shall ensure, where practicable, that any closure specified in the instrument or easement, or any closure for safety or emergency reasons, is adequately notified (including notification that it is an offence to enter the strip during the period of closure) to the public by signs erected at all entry points to the strip, unless the instrument or easement provides that another person is responsible for such notification.

Section 237C: inserted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

### **237D Transfers to the Crown or regional council**

- (1) Notwithstanding the provisions of the Reserves Act 1977, the Minister of Conservation or a regional council may, with the prior written agreement of the territorial authority, declare by notice in the *Gazette* that an esplanade reserve, or any part of an esplanade reserve,—
  - (a) shall cease to be vested in and administered by the territorial authority but instead shall vest in the Crown or the regional council; and
  - (b) shall have such classification under the Reserves Act 1977 as may be specified in the *Gazette* notice, or shall be included in any existing reserve under that Act,—and, subject to the provisions of the Reserves Act 1977, the reserve shall be administered in accordance with that classification.
- (2) The Minister of Conservation or a regional council may, with the prior written agreement of the territorial authority, declare

by notice in the *Gazette* that the bed of any river or lake shall cease to be vested in the territorial authority but instead shall vest in the Crown or the regional council, as the case may be.

- (3) The notice shall be registered in the office of the Registrar-General of Land.

Section 237D: inserted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 237D(1): amended, on 10 August 2005, by section 94 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 237D(3): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**237E Compensation for taking of esplanade reserves or strips on allotments of less than 4 hectares**

- (1) Where an allotment of less than 4 hectares is created when land is subdivided, no compensation for esplanade reserves or esplanade strips shall be payable for any area of land within 20 metres from the mark of mean high water springs of the sea or from the bank of any river or from the margin of any lake, as the case may be.
- (2) Where an esplanade reserve or esplanade strip of a width greater than 20 metres is required to be set aside on an allotment of less than 4 hectares created when land is subdivided, the territorial authority shall pay compensation for the area of the esplanade reserve or esplanade strip above 20 metres, to the registered proprietor of that allotment, unless the registered proprietor agrees otherwise.

Section 237E: inserted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

**237F Compensation for taking of esplanade reserves or strips on allotments of 4 hectares or more**

Where any esplanade reserve or esplanade strip of any width is required to be set aside or created on an allotment of 4 hectares or more created when land is subdivided, the territorial authority shall pay to the registered proprietor of that allotment compensation for any esplanade reserve or any interest in land taken for any esplanade strip, unless the registered proprietor agrees otherwise.

Section 237F: inserted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

### **237G Compensation**

- (1) This section applies if—
  - (a) the bed of a river or lake—
    - (i) is vested in the Crown in accordance with section 237A(1)(a); and
    - (ii) adjoins, or would adjoin if it were not for an esplanade reserve, any allotment of 4 hectares or more when land is subdivided; or
  - (b) land that is within the coastal marine area—
    - (i) becomes part of the common marine and coastal area in accordance with section 237A(1)(b); and
    - (ii) adjoins, or would adjoin if it were not for an esplanade reserve, any allotment of 4 hectares or more created when land is subdivided.
- (2) In the case of land referred to in subsection (1)(a), the Crown or territorial authority, as the case may be, must pay compensation to the registered proprietor of that land, unless the registered proprietor agrees otherwise.
- (3) In the case of land referred to in subsection (1)(b), the Crown must pay compensation to the registered proprietor of that land, unless the registered proprietor agrees otherwise.

Section 237G: substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

### **237H Valuation**

- (1) If the territorial authority or Crown, as the case may be, and the registered proprietor cannot agree as to the amount of compensation, including any additional survey costs, payable under section 237E, section 237F, or section 237G, the amount shall be determined by a registered valuer agreed on by the parties (or, failing agreement, nominated by the President of the New Zealand Institute of Valuers), who shall provide a copy of the determination to all parties.
- (2) The territorial authority or Crown, as the case may be, or the registered proprietor who is dissatisfied with the determination under subsection (1) may, within 20 working days after service

- of the determination, object to the determination to the registered valuer in writing, stating the grounds of objection.
- (3) Sections 34, 35, 36, and 38 of the Rating Valuations Act 1998 (and any regulations made under that Act relating to reviews and objections), as far as they are applicable and with all necessary modifications, are to apply to the objection as if—
- (a) the registered valuer had been appointed by a territorial authority to review the objection; and
  - (b) the review had been made under section 34 of that Act; and
  - (c) the references to a territorial authority in sections 34(4), 35, and 36 of that Act were references to the registered valuer.
- (4) For the purposes of this section and of sections 237E to 237G, the amount of compensation shall be equal to—
- (a) in the case of an esplanade reserve, the value of the land set aside:
  - (b) in the case of an esplanade strip, the value of the interest in land created—

and any additional survey costs incurred by reason of the esplanade reserve or esplanade strip, as the case may be, as at the date of the deposit of the survey plan.

Section 237H: inserted, on 7 July 1993, by section 124 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 237H(1): amended, on 1 July 1998, by section 54(1) of the Ratings Valuations Act 1998 (1998 No 69).

Section 237H(2): substituted, on 1 July 1998, by section 54(1) of the Ratings Valuations Act 1998 (1998 No 69).

Section 237H(3): substituted, on 1 July 1998, by section 54(1) of the Ratings Valuations Act 1998 (1998 No 69).

### *Vesting of roads and reserves*

#### **238 Vesting of roads**

- (1) When the Registrar-General of Land deposits a survey plan, or a Chief Surveyor approves a survey plan to which section 228 applies, the land shown on the survey plan as road to be vested in a local authority or the Crown vests, free from all interests in land including any encumbrances (without the necessity of any instrument of release or discharge or otherwise),—

- (a) in the case of a regional road, in the territorial authority or regional council, as the case may be:
  - (b) in the case of a Government road declared as such under any Act, in the Crown:
  - (c) in the case of a State highway, in the Crown or the territorial authority, as the case may be:
  - (d) in the case of any other road, in the territorial authority.
- (2) This section has effect notwithstanding section 168 of the Land Transfer Act 1952 (which relates to the dedication of roads for public purposes).

Section 238: amended, on 7 July 1993, by section 125 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 238(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **239 Vesting of reserves or other land**

- (1) When the Registrar-General of Land deposits a survey plan, or a Chief Surveyor approves a survey plan to which section 228 applies,—
- (a) any land shown on the survey plan as reserve to be vested in the territorial authority or the Crown, vests in the territorial authority or the Crown, as the case may be, free from all interests in land, including any encumbrances (without the necessity of any instrument of release or discharge or otherwise) for the purposes shown on the survey plan, and subject to the Reserves Act 1977; and
  - (b) any land shown on the survey plan as land to be vested in the territorial authority or in the Crown in lieu of reserves, shall vest in the territorial authority or in the Crown, as the case may be, free from all interests in land, including any encumbrances (without the necessity of an instrument of release or discharge or otherwise); and
  - (c) any land or any part of the bed of a river (not being part of the coastal marine area) or lake, shown on the survey plan as land to be vested in the territorial authority or the Crown, shall vest in the territorial authority or the Crown, as the case may be, free from all interests in



- land, including any encumbrances (without the necessity of an instrument of release or discharge or otherwise); and
- (d) to avoid doubt, any land shown on the survey plan as land in the coastal marine area becomes part of the marine and coastal area.
- (2) Notwithstanding subsection (1), the land may be vested subject to any specified interest which the territorial authority has certified, on the survey plan, shall remain with the land.
- (3) Any land vested in the Crown vests under the Land Act 1948 unless this Act provides otherwise.

Section 239(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 239(1)(a): amended, on 7 July 1993, by section 126(1)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 239(1)(b): amended, on 7 July 1993, by section 126(1)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 239(1)(b): amended, on 7 July 1993, by section 126(1)(c) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 239(1)(c): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 239(1)(d): added, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 239(2): added, on 7 July 1993, by section 126(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 239(3): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

### *Conditions as to amalgamation of land*

#### **240 Covenant against transfer of allotments**

- (1) Where a subdivision consent includes a condition under section 220(1)(b) which requires that the owner enter into a covenant with the territorial authority of the kind referred to in section 220(2)(a), the territorial authority—
- (a) shall not approve the survey plan unless the owner has entered into such a covenant; and
- (b) when the covenant has been entered into, shall endorse on the survey plan a certificate to this effect.

- (2) Where a survey plan is endorsed with a certificate of the kind referred to in subsection (1)(b),—
- (a) the Registrar-General of Land shall not deposit the survey plan under the Land Transfer Act 1952, and (in respect of a subdivision by the Crown) shall not issue a certificate of title for any separate allotment on a survey plan approved by the Chief Surveyor for the purposes of section 228; and
  - (b) the Registrar-General of Land shall not deposit the survey plan in the Deeds Register Office,—  
unless the covenant referred to in the certificate has been lodged for registration.
- (3) Every covenant referred to in subsection (1) shall be in writing, be signed by the owner, be signed by the chief executive or other authorised officer of the territorial authority, and be deemed—
- (a) to be an instrument capable of registration under the Land Transfer Act 1952 and, when so registered, to create in favour of the territorial authority an interest in the land in respect of which it is registered, within the meaning of section 62 of that Act; and
  - (b) to run with the land and bind subsequent owners.
- (4) The territorial authority may at any time, whether before or after the survey plan has been deposited in the Land Registry Office or the Deeds Register Office, cancel, in whole or in part, any covenant imposed under this section or under the corresponding provision of any former enactment.
- (5) When a territorial authority cancels a covenant in whole or in part, then—
- (a) where the survey plan has not been approved by the Chief Surveyor, a memorandum of the cancellation shall be endorsed on the survey plan:
  - (b) where the survey plan has been approved by the Chief Surveyor or deposited, the territorial authority must forward to the Registrar-General of Land a certificate signed by the chief executive or other authorised officer of the territorial authority to the effect that the covenant has been cancelled in whole or in part, and

the Registrar-General of Land must note the records accordingly.

Section 240(2)(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 240(2)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 240(3): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 240(3): amended, on 17 December 1997, by section 46(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 240(4): added, on 7 July 1993, by section 127 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 240(5): added, on 7 July 1993, by section 127 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 240(5)(b): substituted, on 17 December 1997, by section 46(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 240(5)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 240(5)(b): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

## **241 Amalgamation of allotments**

- (1) Where a subdivision consent includes a condition under section 220(1)(b) which requires, in accordance with section 220(2)(a), that land be held in a particular certificate of title,—
  - (a) the condition shall be endorsed on the survey plan; and
  - (b) the Registrar-General of Land shall not deposit the survey plan under the Land Transfer Act 1952 or in the Deeds Register Office, as the case may be; and
  - (c) in respect of a subdivision of the Crown, the Registrar-General of Land shall not issue a certificate of title for any separate allotment on a survey plan approved by the Chief Surveyor for the purposes of section 228,—  
until he or she is satisfied that the condition has been complied with as fully as may be possible in the office of the Registrar-General.
- (2) When a condition of the kind referred to in subsection (1), or a similar condition under the corresponding provision of any previous enactment, has been complied with,—

- (a) the separate parcels of land included in the certificate of title in accordance with the condition shall not be capable of being disposed of individually, or of again being held under separate certificates of title, except with the approval of the territorial authority; and
  - (b) on the issue of the certificate of title, the Registrar-General of Land shall enter on the certificate of title a memorandum that the land is subject to this section.
- (3) The territorial authority may at any time, whether before or after the survey plan has been deposited in the Land Registry Office or the Deeds Register Office, cancel, in whole or in part, any condition described in subsection (2).
- (4) When a territorial authority cancels a condition in whole or in part, then—
  - (a) where the survey plan has not been approved by the Chief Surveyor, a memorandum of the cancellation shall be endorsed on the survey plan:
  - (b) where the survey plan has been approved by the Chief Surveyor or deposited, the territorial authority must forward to the Registrar-General of Land a certificate signed by the chief executive or other authorised officer of the territorial authority to the effect that the condition has been cancelled in whole or in part, and the Registrar-General of Land must note the records accordingly.

Section 241(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 241(1)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 241(1)(c): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 241(2): amended, on 7 July 1993, by section 128(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 241(2)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 241(3): added, on 7 July 1993, by section 128(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 241(4): added, on 7 July 1993, by section 128(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 241(4)(b): substituted, on 17 December 1997, by section 47 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 241(4)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 241(4)(b): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

## **242 Prior registered instruments protected**

### **(1) Where—**

- (a) for the purpose of complying with a condition of a kind referred to in section 220(1)(b),—
  - (i) a covenant is registered in accordance with section 240, to the effect that specified land shall not, without the approval of the territorial authority, be transferred, leased, or otherwise disposed of except in conjunction with other land; or
  - (ii) specified land is amalgamated in 1 certificate of title with any other land in accordance with section 241; and
- (b) that other land is already subject to a registered instrument under which a power to sell, a right of renewal, or a right or obligation to purchase is lawfully conferred or imposed; and
- (c) that power, right, or obligation becomes exercisable but is not able to be exercised or fully exercised because of section 240(2) or section 241(2)—

the specified land shall be deemed to be and always to have been part of the other land that is subject to that instrument, and all rights and obligations in respect of, and encumbrances on, that other land shall be deemed also to be rights and obligations in respect of, or encumbrances on, the specified land; and the Registrar-General of Land shall enter upon all relevant certificates of title a memorandum to the effect that the land therein is subject to this subsection.

- (2) Where any instrument to which subsection (1) applies is a mortgage, charge, or lien, it shall be deemed to have priority over any mortgage, charge, or lien against the specified

land which is registered subsequent to the issue of the certificate of title pursuant to section 241 or the registration of the covenant entered into pursuant to section 240, as the case may be; and the Registrar-General of Land shall enter upon all relevant certificates of title a memorandum to the effect that the land therein is subject to this subsection.

- (3) Where a memorandum has been entered on a certificate of title under this section, and the Registrar-General of Land then receives notification pursuant to section 240(5) or section 241(4), the Registrar-General of Land shall note the memorandum accordingly.

Section 242(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 242(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 242(3): added, on 7 July 1993, by section 129 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 242(3): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### *Conditions as to easements*

#### **243 Survey plan approved subject to grant or reservation of easements**

Where a subdivision consent is granted or any certificate of title is issued subject to a condition that any specified easements be granted or reserved, the following provisions apply:

- (a) no such easement shall—
- (i) be surrendered by the owner of the dominant tenement; or
  - (ii) in the case of an easement in gross, be surrendered by the grantee of the easement; or
  - (iii) be merged by transfer to the owner of the dominant or servient tenement; or
  - (iv) be varied—
- except with the written consent of the territorial authority:

- (b) the territorial authority shall not approve the survey plan unless there is endorsed on the survey plan a memorandum showing, with respect to each such easement, which is the dominant tenement and which is the servient tenement or, in the case of an easement in gross, the name of the proposed grantee and which is the servient tenement:
- (c) the Registrar-General of Land shall refuse to register any instrument of transfer or conveyance or lease or other disposition of any allotment shown on the survey plan, unless the Registrar is satisfied that all easements so specified which are appurtenant to that allotment or to which that allotment is subject have been duly granted or reserved or will by the registration of that instrument be granted or reserved:
- (d) the Registrar-General of Land shall endorse on the instrument by which the easement is granted or reserved, and also on any relevant certificates of title, a memorial that the easement is subject to the provisions of this section:
- (e) the territorial authority may at any time, whether before or after the survey plan has been deposited in the Land Registry Office or the Deeds Register Office, revoke the condition in whole or part:
- (f) when a territorial authority cancels a condition in whole or in part, then—
  - (i) where the survey plan has not been approved by the Chief Surveyor, a memorandum of the cancellation shall be endorsed on the survey plan:
  - (ii) where the survey plan has been approved by the Chief Surveyor or deposited, the territorial authority must forward to the Registrar-General of Land a certificate signed by the chief executive or other authorised officer of the territorial authority to the effect that the condition has been cancelled in whole or in part, and the Registrar-General of Land must note the records accordingly.

Section 243: amended, on 7 July 1993, by section 130(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 243(a)(iii): amended, on 7 July 1993, by section 130(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 243(c): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 243(d): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 243(f): substituted, on 7 July 1993, by section 130(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 243(f)(ii): substituted, on 17 December 1997, by section 48 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 243(f)(ii): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 243(f)(ii): amended, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

### *Company leases and cross leases*

#### *[Repealed]*

Heading: repealed, on 1 July 1992, pursuant to section 92(1) of the Building Act 1991 (1991 No 150).

## **244 Company leases and cross leases**

### *[Repealed]*

Section 244: repealed, on 1 July 1992, by section 92(1) of the Building Act 1991 (1991 No 150).

### *Reclamations*

## **245 Consent authority approval of a plan of survey of a reclamation**

- (1) The holder of every resource consent granted for a reclamation shall as soon as reasonably practicable after completion of the reclamation, submit to the consent authority for its approval a plan of survey in respect of the land that has been reclaimed.
- (2) The plan of survey referred to in subsection (1) shall be prepared in accordance with regulations made under the Cadastral Survey Act 2002 relating to survey plans within the meaning of those regulations, and shall show and define—
  - (a) the area reclaimed, including its location and the position of all new boundaries; and



- (b) the location and size of the portion of any area which is required as a condition of a resource consent to be set aside as an esplanade reserve or created as an esplanade strip.
- (3) *[Repealed]*
- (4) A consent authority shall approve a plan of survey submitted to it under subsection (1) if, and only if, it is satisfied that—
  - (a) the reclamation conforms with the resource consent and any relevant provisions of any regional plan; and
  - (b) the plan of survey conforms with subsections (2) and (3) and the resource consent; and
  - (c) in respect of any condition of the resource consent that has not been complied with—
    - (i) a bond has been given under section 108(2)(b); or
    - (ii) a covenant has been entered into under section 108(2)(d).
- (5) A regional council (as the consent authority) approves a plan of survey by—
  - (a) affixing its common seal to the plan of survey (or a copy of it); and
  - (b) having its chief executive sign and date a certificate stating that—
    - (i) the reclamation conforms with the resource consent and the relevant provisions of any regional plan; and
    - (ii) in respect of any condition of the resource consent that has not been complied with, a bond has been given under section 108(2)(b) or a covenant has been entered into under section 108(2)(d).
- (6) After signing the certificate referred to in subsection (5)(b), the consent authority shall forward a copy of that certificate to the relevant territorial authority.

Section 245(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 245(2)(b): substituted, on 7 July 1993, by section 131(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 245(3): repealed, on 7 July 1993, by section 131(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 245(4)(c)(i): amended, on 17 December 1997, by section 49(a) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 245(4)(c)(ii): amended, on 17 December 1997, by section 49(b) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 245(5): substituted, on 1 October 2009, by section 125(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 245(6): amended, on 1 October 2009, by section 125(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **246 Restrictions on deposit of plan of survey for reclamation**

- (1) The holder of every resource consent granted for a reclamation shall take all steps necessary to ensure that the plan of survey is deposited under the Land Transfer Act 1952 or with the Registrar-General of Land as soon as reasonably practicable after the date the plan of survey is approved by the relevant consent authority under section 245.
- (2) No plan of survey of a reclamation shall be deposited under the Land Transfer Act 1952 or with the Registrar-General of Land unless—
  - (a) within the preceding 3 years the relevant consent authority has approved the plan of survey under section 245; and
  - (b) there is lodged with the Registrar-General of Land a copy of the certificate issued under section 245(5)(b).
- (3) On the deposit of a plan of survey under the Land Transfer Act 1952 or by the Registrar-General of Land, the land shown on that plan as esplanade reserve shall be deemed to be set apart and vested in the Crown as local purpose reserve within the meaning of section 23 of the Reserves Act 1977 for the purposes described in section 229 of this Act.
- (4) Subsection (3) shall apply notwithstanding section 167 of the Land Act 1948.

Section 246(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 246(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 246(2)(b): amended, on 1 October 2009, by section 126 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 246(2)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 246(3): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 246(3): amended, on 7 July 1993, by section 132 of the Resource Management Amendment Act 1993 (1993 No 65).

## **Part 11**

### **Environment Court**

Part 11 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

#### **247 Planning Tribunal re-named Environment Court**

There shall continue to be a court of record called the Environment Court which shall be the same court as the court called the Planning Tribunal immediately before the commencement of this section and which, in addition to the jurisdiction and powers conferred on it by or pursuant to this Act or any other Act, shall continue to have all the powers inherent in a court of record.

Section 247: substituted, on 2 September 1996, by section 6(1) of the Resource Management Amendment Act 1996 (1996 No 160).

#### **248 Membership of Environment Court**

The Environment Court shall consist of the following members:

- (a) Environment Judges appointed in accordance with section 250:
- (b) Environment Commissioners appointed in accordance with section 254.

Section 248 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 248: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 248(a): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 248(b): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

*Environment Judges and alternate Environment Judges*

Heading: amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

**249 Eligibility for appointment as an Environment Judge or alternate Environment Judge**

- (1) A person shall not be appointed or hold office as an Environment Judge unless he or she is, or is eligible to be, a District Court Judge. If an appointee is not a District Court Judge at the time of appointment as an Environment Judge, he or she shall be appointed as a District Court Judge at that time.
- (2) A person shall not be appointed or hold office as an alternate Environment Judge unless he or she is a District Court Judge or a Maori Land Court Judge.

Section 249 heading: amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 249(1): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 249(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

**250 Appointment of Environment Judges and alternate Environment Judges**

- (1) The Governor-General may, on the recommendation of the Attorney-General, after consultation with the Minister for the Environment and the Minister of Maori Affairs, appoint a person as an Environment Judge or an alternate Environment Judge.
- (2) A person shall hold office as an Environment Judge or as an alternate Environment Judge for such term as he or she holds office as a District Court Judge or Maori Land Court Judge, unless he or she sooner resigns or is removed from office under this Act.
- (3) At any one time—
  - (a) no more than 10 Environment Judges shall hold office; and

- (b) any number of alternate Environment Judges shall hold office.
- (4) For the purposes of subsection (3)(a),—
  - (a) an Environment Judge who is acting on a full-time basis counts as 1:
  - (b) an Environment Judge who is acting on a part-time basis counts as an appropriate fraction of 1:
  - (c) the aggregate number (for example, 7.5) must not exceed the maximum number of Environment Judges that is for the time being permitted.

Section 250 heading: amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 250(1): amended, on 20 May 2004, by section 3(1) of the Resource Management Amendment Act 2004 (2004 No 46).

Section 250(1): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 250(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 250(3)(a): amended, on 1 October 2009, by section 127 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 250(3)(a): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 250(3)(b): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 250(4): added, on 20 May 2004, by section 3(2) of the Resource Management Amendment Act 2004 (2004 No 46).

## **251 Principal Environment Judge**

- (1) The Governor-General may, on the recommendation of the Attorney-General, appoint an Environment Judge as the Principal Environment Judge.
- (2) The Principal Environment Judge shall be responsible for ensuring the orderly and expeditious discharge of the business of the court and accordingly may, subject to the provisions of this or any other Act and to such consultation with the Environment Judges as is appropriate and practicable, make arrangements as to the Environment Judge or Judges and member or members who is or are to exercise the court's jurisdiction in particular matters or classes of matters and in particular places and areas.

Section 251 heading: amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 251(1): amended, on 20 May 2004, by section 4 of the Resource Management Amendment Act 2004 (2004 No 46).

Section 251(1): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 251(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 251(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

### **251A Appointment of acting Principal Environment Judge**

- (1) This section applies if—
  - (a) the Principal Environment Judge is unable to exercise the duties of office because of illness or absence from New Zealand, or for any other reason; or
  - (b) the office of Principal Environment Judge is vacant.
- (2) The Governor-General may appoint another Environment Judge to act in place of the Principal Environment Judge until the Principal Environment Judge resumes the duties of that office or a successor is appointed, as the case may be.
- (3) While acting in place of the Principal Environment Judge, the acting Principal Environment Judge—
  - (a) may perform the functions and duties of the Principal Environment Judge; and
  - (b) may for that purpose exercise all the powers of the Principal Environment Judge.

Section 251A: inserted, on 10 August 2005, by section 95 of the Resource Management Amendment Act 2005 (2005 No 87).

### **252 When an alternate Environment Judge may act**

- (1) An alternate Environment Judge may act as an Environment Judge when the Principal Environment Judge, in consultation with the Chief District Court Judge or Chief Maori Land Court Judge, considers it necessary for the alternate Environment Judge to do so.
- (2) When an alternate Environment Judge acts as an Environment Judge he or she is to be considered a member of the Environment Court for all purposes.

Section 252 heading: amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 252(1): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 252(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 252(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

*Environment Commissioners and Deputy  
Environment Commissioners*

Heading: amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

**253 Eligibility for appointment as Environment Commissioner or Deputy Environment Commissioner**

When considering whether a person is suitable to be appointed as an Environment Commissioner or Deputy Environment Commissioner of the Environment Court, the Attorney-General shall have regard to the need to ensure that the court possesses a mix of knowledge and experience in matters coming before the court, including knowledge and experience in—

- (a) economic, commercial, and business affairs, local government, and community affairs:
- (b) planning, resource management, and heritage protection:
- (c) environmental science, including the physical and social sciences:
- (d) architecture, engineering, surveying, minerals technology, and building construction:
- (da) alternative dispute resolution processes:
- (e) matters relating to the Treaty of Waitangi and kaupapa Maori.

Section 253 heading: amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 253: amended, on 20 September 2007, by section 4 of the Resource Management Amendment Act 2007 (2007 No 77).

Section 253: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 253: amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 253(da): inserted, on 2 September 1996, by section 8 of the Resource Management Amendment Act 1996 (1996 No 160).

## **254 Appointment of Environment Commissioner or Deputy Environment Commissioner**

- (1) The Governor-General may, on the recommendation of the Attorney-General, after consultation with the Minister for the Environment and the Minister of Maori Affairs, appoint a person as an Environment Commissioner or a Deputy Environment Commissioner of the Environment Court for a period not exceeding 5 years.
- (2) A person may be reappointed as an Environment Commissioner or a Deputy Environment Commissioner any number of times.
- (3) At any one time any number of Environment Commissioners or Deputy Environment Commissioners may hold office.
- (4) If an Environment Commissioner or Deputy Environment Commissioner is not reappointed, he or she may continue in office until his or her successor comes into office, notwithstanding that the term for which he or she was appointed may have expired.

Section 254 heading: amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 254(1): amended, on 20 May 2004, by section 5 of the Resource Management Amendment Act 2004 (2004 No 46).

Section 254(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 254(1): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 254(2): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 254(3): substituted, on 2 September 1996, by section 9 of the Resource Management Amendment Act 1996 (1996 No 160).

Section 254(4): added, on 2 September 1996, by section 9 of the Resource Management Amendment Act 1996 (1996 No 160).

## **255 When a Deputy Environment Commissioner may act**

- (1) A Deputy Environment Commissioner may act in place of an Environment Commissioner when—



- (a) the Environment Commissioner is unavailable; or
  - (b) the Principal Environment Judge considers it necessary that the Deputy Environment Commissioner do so.
- (2) When a Deputy Environment Commissioner is acting for an Environment Commissioner, the Deputy Environment Commissioner shall be considered as an Environment Commissioner of the Environment Court for all purposes.

Section 255 heading: amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 255(1): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 255(1)(a): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 255(1)(a): amended, on 2 September 1996, by section 10 of the Resource Management Amendment Act 1996 (1996 No 160).

Section 255(1)(b): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 255(1)(b): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 255(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 255(2): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

## **256 Oath of office**

A person appointed as an Environment Commissioner or a Deputy Environment Commissioner of the Environment Court shall, before undertaking any duties as such, take an oath of office that he or she will honestly and impartially perform the duties of the office.

Section 256: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 256: amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

### *Removal and resignation of members*

## **257 Resignation**

An Environment Judge, alternate Environment Judge, Environment Commissioner, or Deputy Environment Commissioner may resign his or her office as such by giving written notice to the Attorney-General.

Section 257: amended, on 20 May 2004, by section 6 of the Resource Management Amendment Act 2004 (2004 No 46).

Section 257: amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 257: amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

## **258 Removal of members**

- (1) The Governor-General may, if he or she thinks fit, remove an Environment Judge, alternate Environment Judge, Environment Commissioner, or Deputy Environment Commissioner from his or her office as such for inability or misbehaviour.
- (2) The removal under subsection (1) of a District Court Judge from office as an Environment Judge or an alternate Environment Judge does not operate to cancel his or her appointment as a District Court Judge.

Section 258(1): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 258(1): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 258(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

### *Special advisors*

## **259 Special advisors**

- (1) The Principal Environment Judge may appoint as a special advisor a person who is able to assist the Environment Court in a proceeding before it.
- (2) A special advisor is not a member of the court but may sit with it and assist it in any way the court determines.

Section 259(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 259(1): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 259(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### *Officers of court*

Heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**260 Registrar and other officers**

- (1) The Environment Court—
  - (a) shall have a Registrar; and
  - (aa) may have 1 or more Deputy Registrars; and
  - (b) may have other persons to assist it in an administrative capacity.
- (2) The Registrar, a Deputy Registrar, and every other person assisting the court shall—
  - (a) be appointed under the State Sector Act 1988; and
  - (b) be officers of the court.
- (2A) A Deputy Registrar has all the powers, functions, duties, and immunity of the Registrar subject to the control of the Registrar.
- (3) An officer of the court may also hold another office or employment in the Public Service.

Section 260(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 260(1)(aa): inserted, on 10 August 2005, by section 96(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 260(2): amended, on 10 August 2005, by section 96(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 260(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 260(2)(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 260(2A): inserted, on 10 August 2005, by section 96(3) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 260(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

*Miscellaneous provisions relating to court*

Heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**261 Protection from legal proceedings**

- (1) No action lies against any member of the Environment Court for anything they say, do, or omit to say or do, while acting in good faith in the performance of their duties.
- (2) In addition, a member of the Environment Court who is a District Court Judge also has the immunities conferred by section

119 of the District Courts Act 1947 (which confers on District Court Judges, at all times, the same immunities as a Judge of the High Court).

- (3) No action lies against the Registrar for anything the Registrar says or does, or omits to say or do, while acting in good faith under section 278(3), section 281(5), or section 281A.

Section 261(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 261(2): added, on 20 May 2004, by section 7 of the Resource Management Amendment Act 2004 (2004 No 46).

Section 261(3): added, on 10 August 2005, by section 97 of the Resource Management Amendment Act 2005 (2005 No 87).

## **262 Environment Court members who are ratepayers**

A member of the Environment Court is not to be considered to have an interest in a proceeding before the court solely on the ground that the member is a ratepayer.

Section 262 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 262: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **263 Remuneration of Environment Commissioners and special advisors**

There shall be paid, out of money appropriated by Parliament for the purpose, to every Environment Commissioner, Deputy Environment Commissioner, and special advisor, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly, and—

- (a) the court shall be a statutory Board for the purposes of that Act; and
- (b) every special advisor shall be deemed to be a member of a statutory Board.

Section 263 heading: amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 263: amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 263(a): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**264 Annual report of Registrar**

- (1) The Registrar shall no later than 31 August in each year, deliver to the Minister of the Crown who is responsible for the Ministry of Justice a report stating such information relating to the administration, workload, and resources of the Environment Court during the year ending on the preceding 30 June as the Minister of the Crown who is responsible for the Ministry of Justice may require.
- (2) The Minister of the Crown who is responsible for the Ministry of Justice shall lay before the House of Representatives each report received by him or her under this section within 10 sitting days of receiving it.

Section 264(1): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 264(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 264(1): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 264(2): amended, on 1 October 2003, pursuant to section 14(1) of the State Sector Amendment Act 2003 (2003 No 41).

Section 264(2): amended, on 1 July 1995, by section 10(1) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

*Constitution of court*

Heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**265 Environment Court sittings**

- (1) The quorum for the Environment Court is—
  - (a) 1 Environment Judge and 1 Environment Commissioner sitting together; or
  - (b) 1 Environment Judge sitting alone for the purposes of section 279 or proceedings under Part 12; or
  - (c) 1 Environment Commissioner sitting alone in accordance with a direction of the Principal Environment Judge under section 280.
- (2) When an Environment Judge sits with an Environment Commissioner or special advisor, the Environment Judge shall preside at the sitting.

- (3) A decision of a majority of the members of the Environment Court present at a sitting is the decision of the court but, if there is no majority, the decision of the presiding member is the decision of the court.

Section 265 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 265(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 265(1)(a): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 265(1)(a): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 265(1)(b): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 265(1)(b): amended, on 7 July 1993, by section 133 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 265(1)(c): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 265(1)(c): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 265(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 265(2): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 265(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **266 Constitution of the Environment Court not to be questioned**

- (1) It is in the sole discretion of the member of the Environment Court presiding at a sitting of the court to decide whether the court has been properly constituted and convened.
- (2) The exercise of discretion under subsection (1) may not be questioned in proceedings before the court or in another court.

Section 266 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 266(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 266(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

*Conferences and additional dispute resolution*

**267 Conferences**

- (1) An Environment Judge may at any time after the lodging of proceedings require the parties, or any Minister, local authority, or other person which or who has given notice of intention to appear under section 274 to be present in person or by representative at a conference presided over by a member of the court.
- (2) Any party may request an Environment Judge to convene a conference under subsection (1).
- (3) The member of the court presiding at any conference under subsection (1) may, after giving the parties an opportunity to be heard, do all or any of the following things:
  - (a) direct that such amendments to pleadings be made as appear to the member to be necessary:
  - (b) direct that any admissions which have been made by any party and which do not appear in the pleadings, be recorded in such a manner as the member thinks fit:
  - (c) define the issues to be tried:
  - (d) direct that any issue, whether of fact or of law or of both, be tried before any other issue:
  - (e) fix the dates by which the respective parties shall deliver to the court and to the other parties, statements of the evidence to be given on behalf of the respective parties:
  - (f) direct the order in which the parties shall present their respective cases:
  - (g) direct the order in which a party may cross-examine witnesses called on behalf of any other party:
  - (h) limit the number of addresses and cross-examinations of witnesses by parties having the same interest:
  - (i) direct that the evidence, or the evidence of any particular witness or witnesses, shall be given orally in open hearing, or by affidavit, or by pre-recorded statement or report duly sworn by the witness before or at the hearing, or partly by one and partly by another or other of such modes of testifying; except that in every case any opposite party shall (if that party so requires) have the opportunity of cross-examining any witness:

- (j) determine any question of admissibility of any evidence proposed to be tendered at the hearing by any party:
  - (k) require further or better particulars of any matters connected with the proceedings:
  - (l) adjourn the conference to allow for consultations among the parties:
  - (m) give such further or other directions as he or she considers necessary.
- (4) The member of the court presiding at any conference under subsection (1)—
- (a) shall ensure that the parties are given an opportunity to make all admissions and all agreements as to the conduct of the proceedings which ought reasonably to be made by them; and
  - (b) with a view to such special order (if any) as to costs as may be just being made at the hearing, may cause a record to be made, in such form as the member may direct, of any refusal to make any admission or agreement.

Section 267(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 267(1): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 267(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 267(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 267(3)(e): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 267(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **268 Alternative dispute resolution**

- (1) At any time after lodgment of any proceedings, for the purpose of encouraging settlement, the Environment Court, with the consent of the parties and of its own motion or upon request, may ask one of its members or another person to conduct mediation, conciliation, or other procedures designed to facilitate the resolution of any matter before or at any time during the course of a hearing.



- (2) A member of the Environment Court is not disqualified from resuming his or her role to decide a matter by reason of the mediation, conciliation, or other procedure under subsection (1) if—
- (a) the parties agree that the member should resume his or her role and decide the matter; and
  - (b) the member concerned and the court are satisfied that it is appropriate for him or her to do so.

Section 268 heading: amended, on 10 August 2005, by section 98 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 268(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 268(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 268(2)(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### *Procedure and powers*

#### **269 Court procedure**

- (1) Except as expressly provided in this Act, the Environment Court may regulate its own proceedings in such manner as it thinks fit.
- (2) Environment Court proceedings may be conducted without procedural formality where this is consistent with fairness and efficiency.
- (3) The Environment Court shall recognise tikanga Maori where appropriate.
- (4) The Environment Court may use or allow the use in any proceedings, or conference under section 267, of any telecommunication facility which will assist in the fair and efficient determination of the proceedings or conference.

Section 269 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 269(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 269(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 269(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 269(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **270 Hearing matters together**

- (1) The Environment Court shall hear together 2 or more proceedings relating to the same subject matter unless in the court's opinion it is impractical, unnecessary, or undesirable.
- (2) Subsection (1) applies whenever the Environment Court has jurisdiction to hear the proceedings, whether or not they arise under this Act or another Act or regulation or a combination of Acts and regulations.

Section 270(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 270(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **271 Local hearings**

The Environment Court shall conduct any conference or hearing at a place as near to the locality of the subject matter to which the proceedings relate as the court considers convenient unless the parties otherwise agree.

Section 271: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **271A Submitter may be party to proceedings**

*[Repealed]*

Section 271A: repealed, on 1 August 2003, by section 75 of the Resource Management Amendment Act 2003 (2003 No 23).

## **272 Hearing of proceedings**

- (1) The Environment Court shall hear and determine all proceedings as soon as practicable after the date on which the proceedings are lodged with it unless, in the circumstances of a particular case, it is not considered appropriate to do so.
- (2) The time and place of hearing of proceedings before the court shall be fixed by the Registrar in accordance with regulations made under this Act.
- (3) The Registrar shall give not less than 15 working days notice of the time and place fixed for a hearing to every party to

the proceedings concerned, except that an Environment Judge may reduce that period in any particular case if he or she thinks fit.

- (4) If a person who has initiated proceedings before the court fails without sufficient cause to appear before the court at the time and place fixed for the hearing, the court may dismiss the proceedings.

Section 272(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 272(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 272(3): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 272(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **273 Successors to parties to proceedings**

- (1) Proceedings brought before the Environment Court shall be deemed to be also brought on behalf of the personal representatives of the person bringing the same and on behalf of the successors, if any, to the rights or interests affected thereby.
- (2) Every party appearing in proceedings before the Environment Court shall be deemed to do so also on behalf of the party's personal representatives and the successors, if any, to the rights or interests affected thereby.

Section 273(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 273(1): amended, on 2 September 1996, by section 12 of the Resource Management Amendment Act 1996 (1996 No 160).

Section 273(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 273(2): amended, on 2 September 1996, by section 12 of the Resource Management Amendment Act 1996 (1996 No 160).

### **274 Representation at proceedings**

- (1) The following persons may be a party to any proceedings before the Environment Court:
- (a) the Minister:
  - (b) a local authority:

- (c) the Attorney-General representing a relevant aspect of the public interest:
  - (d) a person who has an interest in the proceedings that is greater than the interest that the general public has, but the person's right to be a party is limited by section 308C if the person is a person A as defined in section 308A and the proceedings are an appeal against a decision under this Act in favour of a person B as defined in section 308A:
  - (e) a person who made a submission to which the following apply:
    - (i) it was made about the subject matter of the proceedings; and
    - (ii) section 308B(2) and clauses 6(4) and 29(1B) of Schedule 1 were irrelevant to it:
  - (f) a person who made a submission to which the following apply:
    - (i) it was made about the subject matter of the proceedings; and
    - (ii) section 308B(2) or clauses 6(4) or 29(1B) of Schedule 1 was relevant to it; and
    - (iii) it was made in compliance with whichever of section 308B(2) or clauses 6(4) or 29(1B) of Schedule 1 was relevant to it.
- (2) A person described in subsection (1) may become a party to the proceedings by giving notice to the Environment Court and to all other parties within 15 working days after—
- (a) the period for lodging a notice of appeal ends, if the proceedings are an appeal:
  - (b) the decision to hold an inquiry, if the proceedings are an inquiry:
  - (c) the proceedings are commenced, in any other case.
- (3) The notice given under subsection (2) must state—
- (a) the proceedings in which the person has an interest; and
  - (b) whether the person supports or opposes the proceedings and the reasons for that support or opposition; and
  - (c) if applicable, the grounds for seeking representation under subsection (1)(c) or (d); and
  - (d) an address for service.

- (4) A person who becomes a party to the proceedings under this section may appear and call evidence in accordance with subsections (4A) and, if relevant, (4B).
- (4A) Evidence must not be called under subsection (4) unless it is on matters within the scope of the appeal, inquiry, or other proceeding.
- (4B) However, in the case of a person described in subsection (1)(e) or (f), evidence may be called only if it is both—
  - (a) within the scope of the appeal, inquiry, or other proceeding; and
  - (b) on matters arising out of that person's submissions in the previous related proceedings or on any matter on which that person could have appealed.
- (5) A person who becomes a party to the proceedings under this section may not oppose the withdrawal or abandonment of the proceedings unless the proceedings were brought by a person who made a submission in the previous proceedings on the same matter.
- (6) For the purposes of determining whether a person has an interest in proceedings greater than the interest that the general public has, the Environment Court must have regard to every relevant statutory acknowledgment (within the meaning of an Act specified in Schedule 11) in accordance with the provisions of the relevant Act in that schedule.
- (7) Subsection (2) is subject to section 281.

Section 274: substituted, on 1 August 2003, by section 76 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 274(1): substituted, on 1 October 2009, by section 128(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 274(2): substituted, on 1 October 2009, by section 128(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 274(3)(b): amended, on 1 October 2009, by section 128(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 274(4): substituted, on 10 August 2005, by section 99 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 274(4A): inserted, on 10 August 2005, by section 99 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 274(4B): inserted, on 10 August 2005, by section 99 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 274(4B): amended, on 1 October 2009, by section 128(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 274(6): amended, on 1 October 2009, by section 128(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **275 Personal appearance or by representative**

A person who has a right to appear or is allowed to appear before the Environment Court may appear in person or be represented by another person.

Section 275: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

## **276 Evidence**

- (1) The Environment Court may—
  - (a) receive anything in evidence that it considers appropriate to receive; and
  - (b) call for anything to be provided in evidence which it considers will assist it to make a decision or recommendation; and
  - (c) call before it a person to give evidence who, in its opinion, will assist it in making a decision or recommendation.
- (1A) The court may, whether or not the parties consent,—
  - (a) accept evidence that was presented at a hearing held by the consent authority under section 39;
  - (b) direct how evidence is to be given to the court.
- (2) The Environment Court is not bound by the rules of law about evidence that apply to judicial proceedings.
- (3) The Environment Court may receive evidence written or spoken in Maori and the Maori Language Act 1987 shall apply accordingly.

Section 276(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 276(1A): inserted, on 10 August 2005, by section 100 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 276(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 276(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**276A Evidence of documents**

A copy of, or extract from, a policy statement or plan, certified to be a true copy by the principal administrative officer or by any other authorised officer of the relevant local authority, is admissible in evidence in legal proceedings to the same extent as the original document.

Section 276A: inserted, on 1 August 2003, by section 77 of the Resource Management Amendment Act 2003 (2003 No 23).

**277 Hearings and evidence generally to be public**

- (1) All hearings of the Environment Court shall be held in public except as provided in subsection (2).
- (2) The Environment Court may—
  - (a) order that any evidence be heard in private:
  - (b) prohibit or restrict the publication of any evidence—if it considers that the reasons for doing so outweigh the public interest in a public hearing and publication of evidence.

Section 277(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 277(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**278 Environment Court has powers of a District Court**

- (1) The Environment Court and Environment Judges have the same powers that a District Court has in the exercise of its civil jurisdiction, including, without limitation, the power to commission a report from an independent expert on any matter raised in an appeal, as provided for by rules 342 to 348 of the District Courts Rules 1992.
- (1A) Despite rule 346 of the District Courts Rules 1992, an independent expert from whom a report is commissioned under subsection (1) must be available to be cross-examined by any party.
- (2) An application for an order for discovery or production of documents may be made only with the leave of an Environment Judge.

- (3) If the Registrar is directed to do so by an Environment Judge, the Registrar may act on behalf of the Environment Court or an Environment Judge in doing any act preliminary or incidental to any proceedings, including—
- (a) the issuing of summonses requiring the attendance of witnesses; and
  - (b) the making of an order for the production of documents; and
  - (c) the convening of a conference under section 267.
- (4) An order made by the Registrar under subsection (3) or an application granted under section 281 must be treated as if it were an order of the Environment Court.
- (5) The Registrar may take a statutory declaration or an affidavit.
- Section 278 heading: amended, on 2 September 1996, by section 14 of the Resource Management Amendment Act 1996 (1996 No 160).
- Section 278(1): substituted, on 2 September 1996, by section 14 of the Resource Management Amendment Act 1996 (1996 No 160).
- Section 278(1): amended, on 10 August 2005, by section 101(1) of the Resource Management Amendment Act 2005 (2005 No 87).
- Section 278(1A): inserted, on 10 August 2005, by section 101(2) of the Resource Management Amendment Act 2005 (2005 No 87).
- Section 278(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).
- Section 278(3): substituted, on 10 August 2005, by section 101(3) of the Resource Management Amendment Act 2005 (2005 No 87).
- Section 278(4): added, on 10 August 2005, by section 101(3) of the Resource Management Amendment Act 2005 (2005 No 87).
- Section 278(5): added, on 10 August 2005, by section 101(3) of the Resource Management Amendment Act 2005 (2005 No 87).

## **279 Powers of Environment Judge sitting alone**

- (1) An Environment Judge sitting alone may make any of the following orders:
- (a) an order in the course of proceedings;
  - (b) an order that is not opposed;
  - (c) an order in respect of a matter which the parties to the proceedings agree should be heard and decided by an Environment Judge sitting alone;
  - (d) an order giving directions as to service of anything;
  - (e) an order in any proceedings when the matter at issue is substantially a question of law only:



- (f) an order made on the application of a party to proceedings directing that any proceedings should be heard and decided by an Environment Judge sitting alone because the matter at issue is substantially a question of law only:
  - (fa) an order, in any proceedings where questions of law and other matters are raised, directing that any proceedings should be heard and decided by 1 Environment Judge and 1 Environment Commissioner sitting together:
  - (g) an order as to costs:
  - (h) an order made on an application for a rehearing:
  - (i) an order on any appeal against any requirement to pay an administrative charge:
  - (j) a declaration relating to any inconsistency between a plan and a policy statement:
  - (k) an order directing that any determination under section 91 (deferral pending application for additional consents) be revoked.
- (2) An Environment Judge sitting alone may—
- (a) exercise any powers conferred by the Principal Environment Judge that could have been conferred on an Environment Commissioner under section 280; and
  - (b) waive a requirement or give a direction under section 281.
- (3) An Environment Judge sitting alone may, having regard to the matters set out in section 42 and to such other matters as the Environment Judge thinks fit,—
- (a) on an application made under section 42(4), and on such terms as the Judge thinks fit, make an order cancelling or varying any order made by a local authority under that section:
  - (b) on an application made under section 42(5), and on such terms as the Judge thinks fit, make an order described in section 42(2) and having the same effect as an order made under section 42:
  - (c) on an application made at any stage of proceedings before the Environment Court, and on such terms as the Judge thinks fit, make an order described in section

42(2) and having the same effect as an order made under section 42—

or may decline to make any such order.

- (4) An Environment Judge sitting alone may, at any stage of the proceedings and on such terms as the Judge thinks fit, order that the whole or any part of that person's case be struck out if the Judge considers—
- (a) that it is frivolous or vexatious; or
  - (b) that it discloses no reasonable or relevant case in respect of the proceedings; or
  - (c) that it would otherwise be an abuse of the process of the Environment Court to allow the case to be taken further.

Section 279 heading: amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279 heading: amended, on 7 July 1993, by section 134 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 279(1): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279(1)(c): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279(1)(f): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279(1)(fa): inserted, on 7 July 1993, by section 134 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 279(1)(fa): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279(1)(fa): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279(2)(a): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279(2)(a): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279(3): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279(3)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279(4): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 279(4)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**280 Powers of Environment Commissioner sitting without Environment Judge**

- (1) An Environment Commissioner or Environment Commissioners sitting without an Environment Judge may exercise such powers as may be conferred by the Principal Environment Judge either generally or in relation to a particular matter, and on such terms and conditions as the Principal Environment Judge may think fit, including a power to—
  - (a) issue summonses requiring the attendance of witnesses; and
  - (b) convene a conference under section 267.
- (1A) An order made by an Environment Commissioner under subsection (1) must be treated as if it were an order of the Environment Court.
- (1B) An Environment Commissioner may take a declaration or an affidavit.
- (2) Any party may, within 15 working days of the exercise of any power under this section, apply in writing to an Environment Judge for leave to make an application for a review of the exercise of that power by a fully constituted Environment Court.
- (3) If leave is granted by an Environment Judge, the party may, within a further 7 working days, apply in writing for a review of the exercise of that power by a fully constituted Environment Court.
- (4) The Environment Court, on any such review, may substitute or set aside the Environment Commissioner's decision and make such further or other orders as the case may require.

Section 280 heading: amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 280 heading: amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 280(1): substituted, on 10 August 2005, by section 102 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 280(1A): substituted, on 10 August 2005, by section 102 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 280(1B): inserted, on 10 August 2005, by section 102 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 280(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 280(2): amended, on 2 September 1996, by section 15(3) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 280(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 280(3): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 280(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 280(4): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

## **281 Waivers and directions**

- (1) A person may apply to the Environment Court to—
  - (a) waive a requirement of this Act or another Act or a regulation about—
    - (i) the time within which anything shall be served; or
    - (ii) the time within which an appeal or submission to the Environment Court must be lodged; or
    - (iia) the time within which a person must give notice under section 274 that the person wishes to be a party to the proceedings; or
    - (iii) the method of service; or
    - (iv) the documents that shall be served; or
    - (v) the persons on whom anything shall be served; or
    - (vi) the information, or the accuracy of information, that shall be supplied; or
  - (b) give a direction about—
    - (i) the time within which or the method by which anything is to be served; or
    - (ii) what shall be served, whether or not the direction complies with this Act or any other Act or a regulation; or
    - (iii) the terms, including terms as to adjournment, costs, or other things, on which any information shall be supplied.
- (2) The Environment Court shall not grant an application under this section unless it is satisfied that none of the parties to the proceedings will be unduly prejudiced.

- (3) Without limiting subsection (2), the Environment Court shall not grant an application under this section to waive a requirement as to the time within which anything shall be lodged with the court (to which subsection (1)(a)(ii) applies) unless it is satisfied that—
- (a) the appellant or applicant and the respondent consent to that waiver; or
  - (b) any of those parties who have not so consented will not be unduly prejudiced.
- (4) Without limiting subsections (2) and (3), the Environment Court may waive a requirement as to time under this section whether or not an application is made under this section before the requirement has been breached.
- (5) A Registrar may exercise a power in this section if conferred by the Principal Environment Judge either generally or in relation to a specific matter and, in either case, on such terms and conditions as the Principal Environment Judge thinks fit.

Section 281(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 281(1)(a)(ii): substituted, on 1 August 2003, by section 79 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 281(1)(a)(iia): inserted, on 1 August 2003, by section 79 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 281(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 281(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 281(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 281(5): added, on 10 August 2005, by section 103 of the Resource Management Amendment Act 2005 (2005 No 87).

### **281A Registrar may waive, reduce, or postpone payment of fee**

- (1) The Registrar may waive, reduce, or postpone the payment to the court of any fee prescribed by regulations made under this Act.
- (2) The powers in subsection (1) may be exercised only if—
- (a) the person responsible for paying the fee is unable to pay the fee in whole or in part; or

- (b) in the case of proceedings concerning a matter of public interest, the proceedings are unlikely to be commenced or continued if the powers are not exercised.

Section 281A: inserted, on 10 August 2005, by section 104 of the Resource Management Amendment Act 2005 (2005 No 87).

### **281B Review of exercise of power by Registrar**

- (1) A person directly affected by the exercise of a power by a Registrar may apply to an Environment Judge to reconsider the matter.
- (2) The application must be by notice to the Registrar and other persons affected, within 5 working days after the Registrar's determination or action.
- (3) The Environment Judge may confirm, modify, or reverse the decision of the Registrar.

Section 281B: inserted, on 10 August 2005, by section 104 of the Resource Management Amendment Act 2005 (2005 No 87).

### **282 Power to commit for contempt**

- (1) If any person—
  - (a) wilfully insults, assaults, threatens, or intimidates the court or any member of it or any special advisor to or officer of the court, during a sitting of the court, or in going to or returning from any sitting; or
  - (b) wilfully interrupts the proceedings of the court or otherwise misbehaves while the court is sitting; or
  - (c) wilfully and without lawful excuse disobeys an order or direction of a member of the court in the course of any proceedings before the court—any officer of the court, with or without the assistance of any constable or other person, may, in accordance with an order given by a member of the court, take the person into custody and detain him or her for a period expiring not later than 1 hour following the rising of the court, and an Environment Judge, may, if he or she thinks fit, by warrant under his or her hand, commit the person to prison for any period not exceeding 10 days or impose a fine not exceeding \$1,500.

- (2) A warrant under subsection (1) may be filed in any District Court and shall then be enforceable as an order made by that court.

Section 282(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 282(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 282(1): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 282(1)(a): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 282(1)(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 282(1)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **283 Non-attendance or refusal to co-operate**

- (1) Except as provided in subsection (2), no person shall, without reasonable cause—

- (a) fail to appear in accordance with a summons issued by an Environment Judge or an Environment Commissioner, or fail to produce anything that he or she is required to produce by such a summons; or
- (b) refuse to be sworn or give evidence at proceedings before the court; or
- (c) refuse to answer any questions put by a member of the court during proceedings before the court.

- (2) A person need not comply with subsection (1) if he or she was not given travelling expenses in accordance with the scale for witnesses in civil cases under the District Courts Act 1947 either—

- (a) at the time the summons was served; or
- (b) at some reasonable time before the hearing.

Section 283(1)(a): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 283(1)(a): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 283(1)(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 283(1)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**284 Witnesses' allowances**

- (1) A witness attending the Environment Court in accordance with a summons is entitled to be paid, by the party requiring his or her attendance, expenses for travelling and maintenance while absent from his or her usual residence.
- (2) Payment of expenses shall be made in accordance with the scale of allowances for witnesses in civil cases under the District Courts Act 1947.
- (3) When a witness is called or evidence is obtained by the court, the court may direct that the expenses incurred—
  - (a) form part of the costs of the proceedings; or
  - (b) be paid from money appropriated by Parliament for the purpose.

Section 284(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 284(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**284A Security for costs**

*[Repealed]*

Section 284A: repealed, on 1 October 2009, by section 129 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**285 Awarding costs**

- (1) The Environment Court may order any party to proceedings before it to pay to any other party the costs and expenses (including witness expenses) incurred by the other party that the court considers reasonable.
- (2) Subsection (1) does not apply if the Environment Court makes an order under section 308H(2).
- (3) The Environment Court may order any party to proceedings before it to pay to the Crown all or any part of the court's costs and expenses.
- (4) Subsection (3) does not apply if the Environment Court makes an order under section 308H(3).
- (5) In proceedings under section 87G, 149T, 198E, or 198K, the Environment Court must,—



- (a) when deciding whether to make an order under subsection (1) or (3),—
    - (i) apply a presumption that costs under subsections (1) and (3) are not to be ordered against a person who is a party under section 274(1); and
    - (ii) apply a presumption that costs under subsection (3) are to be ordered against the applicant; and
  - (b) when deciding on the amount of any order it decides to make, have regard to the fact that the proceedings are at first instance.
- (6) The Environment Court may order a party who fails to proceed with a hearing at the time the court arranges, or who fails to give adequate notice of the abandonment of the proceedings, to pay to any other party or to the Crown any of the costs and expenses incurred by the other party or the Crown.

Section 285: substituted, on 1 October 2009, by section 130 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **286 Enforcing orders for costs**

An order for costs made by the Environment Court may be filed in the District Court of the district named in the order and then becomes enforceable as a judgment of the District Court in its civil jurisdiction.

Section 286: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

#### **287 Reference of questions of law to High Court**

- (1) The Environment Court may, in any proceedings before it, state a case for the opinion of the High Court on any question of law that arises in those proceedings; and for that purpose may either conclude the proceedings subject to that opinion, or adjourn them until after that opinion has been given.
- (2) The case shall be settled and signed by an Environment Judge and sent to the Registrar at the appropriate registry of the High Court.
- (3) The settling and signing of the case by an Environment Judge is deemed to be the statement of the case by the court.

- (4) The Environment Court may, in relation to any case stated under this section, after giving notice to the parties of its intention to do so, request the Registrar at the appropriate registry of the High Court for a fixture for the determination of the case.
- (5) For the purposes of this section, the **appropriate registry of the High Court** is the office of the High Court nearest to the place where the appeal, inquiry, or other proceedings was or is being conducted.

Section 287(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 287(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 287(2): amended, on 10 August 2005, by section 105(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 287(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 287(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 287(3): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 287(4): amended, on 10 August 2005, by section 105(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 287(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 287(5): substituted, on 10 August 2005, by section 105(3) of the Resource Management Amendment Act 2005 (2005 No 87).

## 288 Privileges and immunities

Witnesses and counsel appearing before the Environment Court have the same privileges and immunities as they have when they appear in the same capacity in proceedings in a District Court.

Section 288: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### *Appeals, inquiries, and other proceedings before Environment Court*

Heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**289 Reply to appeal or request for inquiry**

*[Repealed]*

Section 289: repealed, on 1 October 2009, by section 131 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**290 Powers of court in regard to appeals and inquiries**

- (1) The Environment Court has the same power, duty, and discretion in respect of a decision appealed against, or to which an inquiry relates, as the person against whose decision the appeal or inquiry is brought.
- (2) The Environment Court may confirm, amend, or cancel a decision to which an appeal relates.
- (3) The Environment Court may recommend the confirmation, amendment, or cancellation of a decision to which an inquiry relates.
- (4) Nothing in this section affects any specific power or duty the Environment Court has under this Act or under any other Act or regulation.

Section 290 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 290(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 290(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 290(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 290(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**290AA Powers of court in regard to certain appeals under clause 14 of Schedule 1**

The Environment Court, when hearing an appeal under clause 14(1) of Schedule 1 relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

Section 290AA: inserted, on 1 October 2009, by section 132 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**290A Environment Court to have regard to decision that is subject of appeal or inquiry**

In determining an appeal or inquiry, the Environment Court must have regard to the decision that is the subject of the appeal or inquiry.

Section 290A: inserted, on 10 August 2005, by section 106 of the Resource Management Amendment Act 2005 (2005 No 87).

**291 Other proceedings before court**

- (1) Except as otherwise provided in this Act, or any other Act, or regulation, every originating application to the Environment Court shall be made by notice of motion. The notice of motion shall specify the order sought, the grounds upon which the application is made, and the persons upon whom the notice is to be served. Every notice of motion shall be supported by an affidavit as to the matters giving rise to the application.
- (2) The applicant shall as soon as reasonably practicable after lodging a notice of motion with the Registrar, serve copies of the notice and affidavit upon such persons, if any, as are parties to the application and advise the Registrar accordingly.
- (3) An Environment Judge may at any time direct the applicant to serve a copy of the notice of motion and affidavit upon any other person.
- (4) Every person upon whom a notice of motion has been served shall, if he or she desires to be heard on the application, within 15 working days after the date of service upon him or her, give written notice in the prescribed form to the Registrar and the applicant of his or her desire to be heard and of the matters he or she wishes to advance.

Section 291 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 291(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 291(3): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

*Court's powers in regard to plans and policy  
statements*

Heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**292 Remedying defects in plans**

- (1) The Environment Court may, in any proceedings before it, direct a local authority to amend a regional plan or district plan to which the proceedings relate for the purpose of—
  - (a) remedying any mistake, defect, or uncertainty; or
  - (b) giving full effect to the plan.
- (2) The local authority to whom a direction is made under subsection (1) shall comply with the direction without using the process in Schedule 1.

Section 292(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 292(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**293 Environment Court may order change to proposed policy statements and plans**

- (1) After hearing an appeal against, or an inquiry into, the provisions of any proposed policy statement or plan that is before the Environment Court, the court may direct the local authority to—
  - (a) prepare changes to the proposed policy statement or plan to address any matters identified by the court;
  - (b) consult the parties and other persons that the court directs about the changes;
  - (c) submit the changes to the court for confirmation.
- (2) The court—
  - (a) must state its reasons for giving a direction under subsection (1); and
  - (b) may give directions under subsection (1) relating to a matter that it directs to be addressed.
- (3) Subsection (4) applies if the Environment Court finds that a proposed policy statement or plan that is before the court departs from—
  - (a) a national policy statement;
  - (b) the New Zealand coastal policy statement;
  - (c) a relevant regional policy statement;
  - (d) a relevant regional plan;
  - (e) a water conservation order.

- (4) The Environment Court may allow a departure to remain if it considers that it is of minor significance and does not affect the general intent and purpose of the proposed policy statement or plan.
- (5) In subsections (3) and (4), **departs** and **departure** mean that a proposed policy statement or plan—
  - (a) does not give effect to a national policy statement, the New Zealand coastal policy statement, or a relevant regional policy statement; or
  - (b) is inconsistent with a relevant regional plan or water conservation order.

Section 293: substituted, on 10 August 2005, by section 107 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 293 heading: amended, on 1 October 2009, by section 133(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 293(1): amended, on 1 October 2009, by section 133(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 293(1)(a): amended, on 1 October 2009, by section 133(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 293(3): amended, on 1 October 2009, by section 133(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 293(4): amended, on 1 October 2009, by section 133(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 293(5): amended, on 1 October 2009, by section 133(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **293A Determinations on recognition orders and agreements made under Marine and Coastal Area (Takutai Moana) Act 2011**

- (1) This section applies to a determination made by the Environment Court on—
  - (a) an appeal relating to—
    - (i) a submission made in reliance on section 85B(1)(a):
    - (ii) a request made in reliance on section 85B(1)(b):
  - (b) an application made under section 85B(1)(c).

- (2) The Environment Court must—
  - (a) determine the matters referred to in subsection (1) in accordance with clause 15 of Schedule 1; and
  - (b) consider the matters set out in section 85B(2).
- (3) An application made under section 85B(1)(c) must be—
  - (a) made in accordance with section 291; and
  - (b) without limiting the discretion as to service under section 291, served on every relevant local authority.

Section 293A: inserted, on 17 January 2005, by section 29 of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 293A heading: substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

#### **294 Review of decision by court**

- (1) Where, after any decision has been given by the Environment Court, new and important evidence becomes available or there has been a change in circumstances that in either case might have affected the decision, the court shall have power to order a rehearing of the proceedings on such terms and conditions as it thinks reasonable.
- (2) Any party may apply to the court on any of those grounds for a rehearing of the proceedings; and in any such case the court, after notice to the other parties concerned and after hearing such evidence as it thinks fit, shall determine whether and (if so) on what conditions the proceedings shall be reheard.
- (3) The decision of the court on any such proceedings shall have the same effect as a decision of the court on the original proceedings.

Section 294 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 294(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 294(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 294(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

#### *Decisions of Environment Court*

Heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**295 Environment Court decisions are final**

A decision of the Environment Court under this Act, or another Act, or regulation, on any matter other than an inquiry, is final unless it is reheard under section 294 or appealed under section 299.

Section 295 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 295: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**296 No review of decisions unless right of appeal or reference to inquiry exercised**

If there is a right to refer any matter for inquiry to the Environment Court or to appeal to the court against a decision of a local authority, consent authority or any person under this Act or under any other Act or regulation—

- (a) no application for review under Part 1 of the Judicature Amendment Act 1972 may be made; and
- (b) no proceedings seeking a writ of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or injunction in relation to that decision, may be heard by the High Court—

unless the right has been exercised by the applicant in the proceedings and the court has made a decision.

Section 296: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**297 Decisions of court to be in writing**

Every decision, determination, or order of the Environment Court, unless it is pronounced orally at a sitting of the court, and every report, recommendation, or determination made by the court on an inquiry, shall be in writing signed by the member who presided at the hearing or inquiry or by a majority of the members who sat on the hearing or inquiry and shall be authenticated with the seal of the court.

Section 297 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 297: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).



**298 Documents judicially noticed**

The Environment Court shall continue to have a seal, and a document to which the seal of the court has been affixed shall be judicially noticed.

Section 298: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

*Appeals from Environment Court decisions*

Heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**299 Appeal to High Court on question of law**

- (1) A party to a proceeding before the Environment Court under this Act or any other enactment may appeal on a question of law to the High Court against any decision, report, or recommendation of the Environment Court made in the proceeding.
- (2) The appeal must be made in accordance with the High Court Rules, except to any extent that those rules are inconsistent with sections 300 to 307.

Section 299: substituted, on 1 January 2004, by section 48(1) of the Supreme Court Act 2003 (2003 No 53).

Section 299(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**300 Notice of appeal**

- (1) An appellant shall file a notice of appeal within 15 working days after the date on which the appellant is notified of the Environment Court's decision or report and recommendation.
- (2) The appeal shall be filed with the Registrar of the High Court.
- (3) Within the time specified in subsection (1) the appellant shall serve a copy of the notice on the authority whose decision was the subject of the Environment Court's decision or report and recommendation.
- (4) Before or within 5 working days after the appeal is filed the appellant shall serve a copy of the notice on—
  - (a) every other party to the proceedings or any person who appeared before the Environment Court; and
  - (b) the Registrar of the Environment Court.

- (5) The notice of appeal shall specify—
- (a) the decision or report and recommendation, or part of the decision or report and recommendation, appealed against; and
  - (b) the error of law alleged by the appellant; and
  - (c) the question of law to be resolved; and
  - (d) the grounds of appeal with sufficient particularity for the court and other parties to understand them; and
  - (e) the relief sought.
- (6) The Registrar of the Environment Court shall send a copy of the whole of the decision appealed against to the Registrar of the High Court as soon as reasonably practicable after receiving the notice of appeal.

Section 300(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 300(2): amended, on 10 August 2005, by section 109(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 300(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 300(4)(a): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 300(4)(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 300(5)(d): amended, on 2 September 1996, by section 17(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 300(5)(e): added, on 2 September 1996, by section 17(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 300(6): amended, on 10 August 2005, by section 109(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 300(6): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **301 Right to appear and be heard on appeal**

- (1) A party to any proceedings or any person who appeared before the Environment Court, who wishes to appear on an appeal to the High Court shall give notice of intention to appear to—
- (a) the appellant; and
  - (b) the Registrar of the High Court; and
  - (c) the Registrar of the court; and

- (d) when the decision or report and recommendation was made by the court after an appeal to it, the authority whose decision was appealed.
- (2) The notice to appear under subsection (1) shall be served within 10 working days after the party was served with the notice of appeal.

Section 301(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 301(1)(b): amended, on 10 August 2005, by section 110 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 301(1)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 301(1)(d): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **302 Parties to the appeal before the High Court**

- (1) The parties to an appeal before the High Court are the appellant and any person who gives notice of intention to appear under section 301.
- (2) The Registrar of the High Court shall ensure that the parties to an appeal before the High Court are served with—
  - (a) every document which is filed or lodged with the Registrar of the High Court which relates to the appeal; and
  - (b) notice of the date set down for hearing the appeal.

Section 302(2)(a): amended, on 10 August 2005, by section 111 of the Resource Management Amendment Act 2005 (2005 No 87).

### **303 Orders of the High Court**

- (1) The High Court may, on application to it or on its own motion, make an order directing the Environment Court to lodge with the Registrar of the High Court any or all of the following things:
  - (a) anything in the possession of the court;
  - (b) a report recording, in respect of any matter or issue the High Court may specify, any of the findings of fact of the court which are not set out in its decision or report and recommendation;
  - (c) a report setting out, so far as is reasonably practicable and in respect of any issue or matter the order may specify, any reasons or considerations to which the court

had regard but which are not set out in its decision or report and recommendation.

- (2) An application under subsection (1) shall be made—
- (a) in the case of the appellant, within 20 working days after the date on which the notice of appeal is lodged; or
  - (b) in the case of any other party to the appeal, within 20 working days after the date of the service on him or her of a copy of the notice of appeal.
- (3) The High Court may make an order under subsection (1) only if it is satisfied that a proper determination of a question of law so requires; and the order may be made subject to such conditions as the High Court thinks fit.

Section 303(1): amended, on 10 August 2005, by section 112 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 303(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 303(1)(a): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 303(1)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 303(1)(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 303(1)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 303(3): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **304 Dismissal of appeal**

The High Court may dismiss an appeal if—

- (a) the appellant does not appear at the hearing of the appeal; or
- (b) the appellant does not proceed with the appeal with due diligence and another party applies to the court to dismiss the appeal.

### **305 Additional appeals on questions of law**

- (1) When a party to an appeal other than the appellant wishes to contend that the decision or report and recommendation of the Environment Court is in error on other questions of law, that

party may lodge a notice to that effect with the Registrar of the High Court.

- (2) The notice under subsection (1) shall be lodged within 20 working days of the date on which the respondent is served with a copy of the notice of appeal.
- (3) Sections 299, 300(3) and (4), 303, and 304 apply to a notice lodged under subsection (1) with all necessary modifications.

Section 305 heading: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 305(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 305(1): amended, on 10 August 2005, by section 113 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 305(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **306 Extension of time**

On the application of a party to an appeal, the High Court may extend any period of time stated in sections 299 to 301, 303, and 305.

### **307 Date of hearing**

When a party to an appeal notifies the Registrar of the High Court—

- (a) that the notice of appeal has been served on all parties to the proceedings; and
- (b) either—
  - (i) that no application has been lodged under section 303; or
  - (ii) that any application lodged under section 303 has been complied with—

the appeal is ready for hearing and the Registrar shall arrange a hearing date as soon as practicable.

Section 307: amended, on 10 August 2005, by section 114 of the Resource Management Amendment Act 2005 (2005 No 87).

**308 Appeals to the Court of Appeal**

- (1) Section 144 of the Summary Proceedings Act 1957 applies in respect of a decision of the High Court under section 299 of this Act as if the decision has been made under section 107 of the Summary Proceedings Act 1957.
- (2) Subsection (1) does not apply to appeals against a determination of the High Court under section 299 if that determination related to a decision of the Environment Court under section 149U. Instead, section 149V(3) to (7) apply.

Section 308(2): added, on 1 October 2009, by section 134 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **Part 11A**

#### **Act not to be used to oppose trade competitors**

Part 11A: inserted, on 1 October 2009, by section 135 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**308A Identification of trade competitors and surrogates**

In this Part,—

- (a) **person A** means a person who is a trade competitor of person B:
- (b) **person B** means the person of whom person A is a trade competitor:
- (c) **person C** means a person who has knowingly received, is knowingly receiving, or may knowingly receive direct or indirect help from person A to bring an appeal or be a party to an appeal against a decision under this Act in favour of person B.

Section 308A: inserted, on 1 October 2009, by section 135 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**308B Limit on making submissions**

- (1) Subsection (2) applies when person A wants to make a submission under section 96 about an application by person B.
- (2) Person A may make the submission only if directly affected by an effect of the activity to which the application relates, that—
  - (a) adversely affects the environment; and

- (b) does not relate to trade competition or the effects of trade competition.
- (3) Failure to comply with the limits on submissions set in section 149E or 149O or clause 6(4) or 29(1B) of Schedule 1 is a contravention of this Part.

Section 308B: inserted, on 1 October 2009, by section 135 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **308C Limit on representation at appeals**

- (1) This section applies when person A wants to be a party under section 274 to an appeal to the Environment Court against a decision under this Act in favour of person B, on the ground that person A has an interest in the proceedings that is greater than the interest that the general public has.
- (2) Person A may be a party to the appeal only if directly affected by an effect of the subject matter of the appeal that—
  - (a) adversely affects the environment; and
  - (b) does not relate to trade competition or the effects of trade competition.

Section 308C: inserted, on 1 October 2009, by section 135 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **308D Limit on appealing under this Act**

Person A must not bring an appeal, or be a party to an appeal, under this Act for any of the following purposes:

- (a) protecting person A from trade competition:
- (b) preventing person B from engaging in trade competition:
- (c) deterring person B from engaging in trade competition.

Section 308D: inserted, on 1 October 2009, by section 135 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **308E Prohibition on using surrogate**

- (1) Person A must not directly or indirectly help person C to bring an appeal for any of the purposes in section 308D against a decision under this Act in favour of person B.
- (2) Person A must not directly or indirectly help person C to be a party to an appeal for any of the purposes in section 308D against a decision under this Act in favour of person B.

Section 308E: inserted, on 1 October 2009, by section 135 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**308F Surrogate must disclose status**

Person C must tell the court if person C—

- (a) appears before the court as the appellant, or as a party to an appeal, against a decision under this Act in favour of person B; and
- (b) has knowingly received, is knowingly receiving, or may knowingly receive direct or indirect help from person A to bring the appeal or be a party to the appeal for any of the purposes in section 308D.

Section 308F: inserted, on 1 October 2009, by section 135 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**308G Declaration that Part contravened**

- (1) Proceedings may be brought in the Environment Court for a declaration that person A or person C—
  - (a) contravened any of the provisions in this Part:
  - (b) aided, abetted, counselled, induced, or procured the contravention of any of the provisions in this Part:
  - (c) conspired with any other person in the contravention of any of the provisions in this Part:
  - (d) was in any other way knowingly concerned in the contravention of any of the provisions in this Part.
- (2) Any person (other than person A or person C) who was a party to an appeal against a decision under this Act in favour of person B may bring the proceedings.
- (3) The proceedings must not be commenced until the appeal against the decision under this Act in favour of person B is determined.
- (4) The proceedings must be commenced within 6 years after the contravention.
- (5) The Environment Court may make the declaration.

Section 308G: inserted, on 1 October 2009, by section 135 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).



**308H Costs orders if declaration made**

- (1) This section applies if the Environment Court makes a declaration under section 308G.
- (2) The Environment Court must make an order that the party against whom it makes the declaration pay to any other party an amount for costs and expenses that the court must calculate by—
  - (a) totalling all the costs and expenses (including witness expenses) that the other party incurred because the party against whom the declaration is made contravened the provision in this Part; and
  - (b) deducting from the total any amount for costs and expenses (including witness expenses) that the party against whom the declaration is made has paid to the other party in previous proceedings on the same matter.
- (3) The Environment Court must make an order that the party against whom it makes the declaration pay to the Crown an amount for costs and expenses that the court must calculate by—
  - (a) totalling all the costs and expenses incurred by the court because the party against whom the declaration is made contravened the provision in this Part; and
  - (b) deducting from the total any amount for costs and expenses that the party against whom the declaration is made has paid to the Crown in previous proceedings on the same matter.
- (4) The court may decline to make an order under subsection (2) or (3) only if the court considers that the order should not be made because the circumstances are exceptional. If the court declines to make an order under subsection (2) or (3), it may make an order under section 285(1) or (3).
- (5) If the court makes a declaration against person C, it must also make an order that person A not directly or indirectly reimburse person C for the costs and expenses that the court has ordered person C to pay.

Section 308H: inserted, on 1 October 2009, by section 135 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**308I Proceedings for damages in High Court**

- (1) A person who obtains a declaration under section 308G may bring proceedings for damages in the High Court against the person against whom the Environment Court made the declaration.
- (2) The proceedings must be brought in accordance with the High Court Rules.
- (3) The proceedings must be commenced within 6 years after the declaration is made.
- (4) The High Court must order the payment of damages for loss suffered by the plaintiff because of the conduct of the defendant that gave rise to the making of the declaration.

Section 308I: inserted, on 1 October 2009, by section 135 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## **Part 12**

### **Declarations, enforcement, and ancillary powers**

**309 Proceedings to be heard by an Environment Judge**

- (1) All proceedings under sections 310 to 319, and 321 to 325 (which relate to declarations, enforcement orders, and abatement notices) shall be heard by an Environment Judge sitting alone or by the Environment Court.
- (2) Proceedings under section 320 (which relates to interim enforcement orders) shall be heard either by an Environment Judge sitting alone or—
  - (a) in the District Court; and
  - (b) except where otherwise directed by the Chief District Court Judge, by a District Court Judge who is an Environment Judge.
- (3) All proceedings under section 338 (which relates to offences) shall be heard—
  - (a) in the District Court; and
  - (b) except where otherwise directed by the Chief District Court Judge, by a District Court Judge who is also an Environment Judge.
- (4) This Part does not apply to a protected customary right.

- (5) However, sections 310 to 313 and sections 330 to 331 apply to the exercise of a protected customary right.

Section 309 heading: amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 309(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 309(1): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 309(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 309(2)(b): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 309(3)(b): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 309(4): added, on 17 January 2005, by section 30 of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 309(4): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 309(5): added, on 17 January 2005, by section 30 of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 309(5): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

### *Declarations*

#### **310 Scope and effect of declaration**

A declaration may declare—

- (a) the existence or extent of any function, power, right, or duty under this Act, including (but, except as expressly provided, without limitation)—
  - (i) any duty imposed by section 32 (other than any duty in relation to a plan or proposed plan or any provision of a plan or proposed plan); and
  - (ii) any duty imposed by section 55; or
- (b) whether, contrary to section 62(3), a provision or proposed provision of a regional policy statement—
  - (i) does not, or is not likely to, give effect to a provision or proposed provision of a national policy statement or New Zealand coastal policy statement; or
  - (ii) is, or is likely to be, inconsistent with a water conservation order; or

- (ba) whether a provision or proposed provision of a regional plan,—
  - (i) contrary to section 67(3), does not, or is not likely to, give effect to a provision or proposed provision of a national policy statement, New Zealand coastal policy statement, or regional policy statement for the region; or
  - (ii) contrary to section 67(4), is, or is likely to be, inconsistent with a water conservation order, any other regional plan for the region, or a determination or reservation of the chief executive of the Ministry of Fisheries made under section 186E of the Fisheries Act 1996; or
- (bb) whether a provision or proposed provision of a district plan,—
  - (i) contrary to section 75(3), does not, or is not likely to, give effect to a provision or proposed provision of a national policy statement, New Zealand coastal policy statement, or regional policy statement; or
  - (ii) contrary to section 75(4), is, or is likely to be, inconsistent with a water conservation order or a regional plan for any matter specified in section 30(1); or
- (c) whether or not an act or omission, or a proposed act or omission, contravenes or is likely to contravene this Act, regulations made under this Act, or a rule in a plan or proposed plan, a requirement for a designation or for a heritage order, or a resource consent; or
- (d) whether or not an act or omission, or a proposed act or omission, is a permitted activity, controlled activity, discretionary activity, non-complying activity, or prohibited activity, or breaches section 10 (certain activities protected) or section 20A (certain existing lawful activities allowed); or
- (e) the point at which the landward boundary of the coastal marine area crosses any river; or
- (f) whether or not a territorial authority has made and is continuing to make substantial progress or effort to—

wards giving effect to a designation as required by section 184A; or

- (g) the matters provided for in section 379 (provisions deemed to be plans or rules in plans); or
- (h) any other issue or matter relating to the interpretation, administration, and enforcement of this Act, except for an issue as to whether any of sections 95 to 95F have been, or will be contravened.

Section 310(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 310(b): substituted, on 10 August 2005, by section 115(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 310(ba): inserted, on 10 August 2005, by section 115(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 310(bb): inserted, on 10 August 2005, by section 115(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 310(c): amended, on 1 August 2003, by section 82(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 310(d): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 310(e): amended, on 7 July 1993, by section 138(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 310(f): added, on 7 July 1993, by section 138(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 310(g): added, on 7 July 1993, by section 138(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 310(g): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 310(h): added, on 1 August 2003, by section 82(3) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 310(h): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **311 Application for declaration**

- (1) Subject to subsections (2) and (3), any person may at any time apply to the Environment Court in the prescribed form for a declaration.
- (2) No person (other than the consent authority or the Minister) may apply to the Environment Court for a declaration that a

consent holder or any other person is contravening any condition of a resource consent or a rule in a plan or proposed plan that requires the holder to adopt the best practicable option to avoid or minimise any adverse effect of the discharge to which the consent or rule relates.

- (3) No person (other than a local authority, consent authority, or the Minister of Conservation) may apply to the Environment Court for a declaration under section 310(e).

Section 311(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 311(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 311(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 311(3): amended, on 7 July 1993, by section 139 of the Resource Management Amendment Act 1993 (1993 No 65).

### **312 Notification of application**

- (1) The applicant for a declaration shall serve notice of the application in the prescribed form on every person directly affected by the application.
- (2) Every notice required to be served under this section shall be served within 5 working days after the application is made to the court.

Section 312(1): amended, on 10 August 2005, by section 116(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 312(1): amended, on 7 July 1993, by section 140 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 312(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **313 Decision on application**

After hearing the applicant, and any person served with notice of the application, and any other person who has the right to be represented at proceedings under section 274, who wishes to be heard, the court may—

- (a) make the declaration sought by an application under section 311, with or without modification; or
- (b) make any other declaration that it considers necessary or desirable; or

- (c) decline to make a declaration.

Section 313: amended, on 17 December 1997, by section 50 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 313: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### *Enforcement orders*

#### **314 Scope of enforcement order**

- (1) An enforcement order is an order made under section 319 by the Environment Court that may do any 1 or more of the following:
- (a) require a person to cease, or prohibit a person from commencing, anything done or to be done by or on behalf of that person, that, in the opinion of the court,—
    - (i) contravenes or is likely to contravene this Act, any regulations, a rule in a plan, a rule in a proposed plan, a requirement for a designation or for a heritage order, or a resource consent, section 10 (certain existing uses protected), or section 20A (certain existing lawful activities allowed); or
    - (ii) is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment:
  - (b) require a person to do something that, in the opinion of the court, is necessary in order to—
    - (i) ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan, a rule in a proposed plan, a requirement for a designation or for a heritage order, or a resource consent; or
    - (ii) avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by or on behalf of that person:
  - (c) require a person to remedy or mitigate any adverse effect on the environment caused by or on behalf of that person:
  - (d) require a person to pay money to or reimburse any other person for any actual and reasonable costs and expenses

- which that other person has incurred or is likely to incur in avoiding, remedying, or mitigating any adverse effect on the environment, where the person against whom the order is sought fails to comply with—
- (i) an order under any other paragraph of this subsection; or
  - (ii) an abatement notice; or
  - (iii) a rule in a plan or a proposed plan or a resource consent; or
  - (iv) any of that person's other obligations under this Act:
- (da) require a person to do something that, in the opinion of the court, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment relating to any land of which the person is the owner or occupier:
  - (e) change or cancel a resource consent if, in the opinion of the court, the information made available to the consent authority by the applicant contained inaccuracies relevant to the enforcement order sought which materially influenced the decision to grant the consent:
  - (f) where the court determines that any 1 or more of the requirements of Schedule 1 have not been observed in respect of a policy statement or a plan, do any 1 or more of the following:
    - (i) grant a dispensation from the need to comply with those requirements:
    - (ii) direct compliance with any of those requirements:
    - (iii) suspend the whole or any part of the policy statement or plan from a particular date (which may be on or after the date of the order, but no such suspension shall affect any court order made before the date of the suspension order).
- (2) For the purposes of subsection (1)(d), **actual and reasonable costs** include the costs of investigation, supervision, and monitoring of the adverse effect on the environment, and the costs of any actions required to avoid, remedy, or mitigate the adverse effect.



- (3) Except as provided in section 319(2), an enforcement order may be made on such terms and conditions as the Environment Court thinks fit (including the payment of any administrative charge under section 36, the provision of security, or the entry into a bond for performance).
- (4) Without limiting the provisions of subsections (1) to (3), an order may require the restoration of any natural and physical resource to the state it was in before the adverse effect occurred (including the planting or replanting of any tree or other vegetation).
- (5) An enforcement order shall, if the court so states, apply to the personal representatives, successors, and assigns of a person to the same extent as it applies to that person.

Section 314(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 314(1)(a): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 314(1)(a)(i): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 314(1)(a)(i): amended, on 7 July 1993, by section 141(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 314(1)(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 314(1)(b)(i): amended, on 7 July 1993, by section 141(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 314(1)(d): amended, on 7 July 1993, by section 141(3)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 314(1)(d): amended, on 7 July 1993, by section 141(3)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 314(1)(d)(iii): amended, on 7 July 1993, by section 141(3)(c) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 314(1)(da): inserted, on 7 July 1993, by section 141(4) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 314(1)(da): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 314(1)(e): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 314(1)(f): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 314(2): substituted, on 7 July 1993, by section 141(5) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 314(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 314(5): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **315 Compliance with enforcement order**

- (1) Where an enforcement order is made against a person, and that enforcement order is served on that person, that person shall—
  - (a) comply with the order; and
  - (b) unless the order directs otherwise, pay all the costs and expenses of complying with the order.
- (2) If a person against whom an enforcement order is made fails to comply with the order, any person may, with the consent of the Environment Court,—
  - (a) comply with the order on behalf of the person who fails to comply with the order, and for this purpose, enter upon any land or enter any structure (with a constable if the structure is a dwellinghouse); and
  - (b) sell or otherwise dispose of any structure or materials salvaged in complying with the order; and
  - (c) after allowing for any moneys received under paragraph (b), if any, recover the costs and expenses of doing so as a debt due from that person.
- (3) Any costs or expenses which remain unpaid under subsection (2)(c) may be registered under the Statutory Land Charges Registration Act 1928 as a charge on any land in respect of which an enforcement order is made.
- (4) Failure to comply with an enforcement order is an offence under section 338.

Section 315(1): substituted, on 7 July 1993, by section 142 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 315(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **316 Application for enforcement order**

- (1) Any person may at any time apply to the Environment Court in the prescribed form for an enforcement order of a kind specified in paragraphs (a) to (d) of section 314(1), or in section 314(2).

- (2) A local authority or consent authority may at any time apply to the Environment Court in the prescribed form for an enforcement order of the kind specified in paragraph (da) or paragraph (e) of section 314(1).
- (3) An application for an enforcement order under section 314(1)(f) may be lodged—
  - (a) by a local authority (or the Minister of Conservation in regard to a regional coastal plan) at any time; or
  - (b) by any other person, no later than 3 months after the date on which the policy statement or plan becomes operative.
- (4) Any person who applies for an enforcement order under any provision of this section may request that the enforcement order be made on any terms and conditions permitted by section 314(3) or section 314(4).
- (5) No person (other than the consent authority or the Minister) may apply to the Environment Court for an enforcement order to enforce any condition of a resource consent or a rule in a plan or proposed plan that requires the holder to adopt the best practicable option to avoid or minimise any adverse effect of the discharge to which the consent or rule relates.

Section 316(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 316(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 316(2): amended, on 7 July 1993, by section 143 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 316(5): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **317 Notification of application**

- (1) Except as provided in section 320 (which relates to interim enforcement orders), where an application for an enforcement order is made, the applicant shall serve notice of the application in the prescribed form on every person directly affected by the application.
- (2) Every notice required to be served under this section shall be served within 5 working days after the application is made to the Environment Court.

Section 317(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **318 Right to be heard**

Except as provided in section 320 (which relates to interim enforcement orders), before deciding an application for an enforcement order, the Environment Court shall—

- (a) hear the applicant; and
- (b) hear any person against whom the order is sought who wishes to be heard.

Section 318: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **319 Decision on application**

- (1) After considering an application for an enforcement order, the Environment Court may—
  - (a) except as provided in subsection (2), make any appropriate order under section 314; or
  - (b) refuse the application.
- (2) Except as provided in subsection (3), the Environment Court must not make an enforcement order under section 314(1)(a)(ii), (b)(ii), (c), (d)(iv), or (da) against a person if—
  - (a) that person is acting in accordance with—
    - (i) a rule in a plan; or
    - (ii) a resource consent; or
    - (iii) a designation; and
  - (b) the adverse effects in respect of which the order is sought were expressly recognised by the person who approved the plan, or granted the resource consent, or approved the designation, at the time of the approval or granting, as the case may be.
- (3) The Environment Court may make an enforcement order if—
  - (a) the court considers it appropriate after having regard to the time that has elapsed and any change in circumstances since the approval or granting, as the case may be; or
  - (b) the person was acting in accordance with a resource consent that has been changed or cancelled under section 314(1)(e).

Section 319(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 319(2): substituted, on 1 August 2003, by section 83 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 319(3): added, on 1 August 2003, by section 83 of the Resource Management Amendment Act 2003 (2003 No 23).

**320 Interim enforcement order**

- (1) Except as provided in this section, the provisions of sections 314 to 319 apply to the application for, and determination of, an interim enforcement order.
- (2) If an Environment Judge or a District Court Judge considers it necessary to do so, the Judge may make an interim enforcement order—
  - (a) without requiring service of notice in accordance with section 317; and
  - (b) without holding a hearing.
- (3) Before making an interim enforcement order, the Environment Judge or the District Court Judge shall consider—
  - (a) what the effect of not making the order would be on the environment; and
  - (b) whether the applicant has given an appropriate undertaking as to damages; and
  - (c) whether the Judge should hear the applicant or any person against whom the interim order is sought; and
  - (d) such other matters as the Judge thinks fit.
- (4) The Judge shall direct the applicant or another person to serve a copy of the interim enforcement order on the person against whom the order is made; and the order shall take effect from when it is served or such later date as the order directs.
- (5) A person against whom an interim enforcement order has been made and who was not heard by a Judge before the order was made, may apply, as soon as practicable after the service of the order, to an Environment Judge or a District Court Judge to change or cancel the order; and, after hearing from the person against whom the interim enforcement order was made, the applicant, and any other person the Judge thinks fit, the Environment Judge or the District Court Judge may confirm, change, or cancel the interim enforcement order.

- (6) An interim enforcement order stays in force until an application for an enforcement order under section 316 is determined, or until cancelled by an Environment Judge or a District Court Judge under subsection (5), or cancelled by the Environment Court under section 321.

Section 320: substituted, on 7 July 1993, by section 145 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 320(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 320(3): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 320(5): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 320(6): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 320(6): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

### **321 Change or cancellation of enforcement order**

- (1) Without limiting section 320(5), any person directly affected by an enforcement order may at any time apply to the Environment Court in the prescribed form to change or cancel the order.
- (2) Sections 317 to 319 (which relate to notification, hearing, and decision) apply to every application under subsection (1) as if it were an application for an enforcement order.

Section 321(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### *Abatement notices*

### **322 Scope of abatement notice**

- (1) An abatement notice may be served on any person by an enforcement officer—
- (a) requiring that person to cease, or prohibiting that person from commencing, anything done or to be done by or on behalf of that person that, in the opinion of the enforcement officer,—
- (i) contravenes or is likely to contravene this Act, any regulations, a rule in a plan, or a resource consent; or

- (ii) is or is likely to be noxious, dangerous, offensive, or objectionable to such an extent that it has or is likely to have an adverse effect on the environment:
  - (b) requiring that person to do something that, in the opinion of the enforcement officer, is necessary to ensure compliance by or on behalf of that person with this Act, any regulations, a rule in a plan or a proposed plan, or a resource consent, and also necessary to avoid, remedy, or mitigate any actual or likely adverse effect on the environment—
    - (i) caused by or on behalf of the person; or
    - (ii) relating to any land of which the person is the owner or occupier:
  - (c) requiring that person, being—
    - (i) an occupier of any land; or
    - (ii) a person carrying out any activity in, on, under, or over a water body or the water within the coastal marine area,—

who is contravening section 16 (which relates to unreasonable noise) to adopt the best practicable option of ensuring that the emission of noise from that land or water does not exceed a reasonable level.
- (2) Where any person is under a duty not to contravene a rule in a proposed plan under sections 9, 12(3), 14(2), or 15(2), an abatement notice may be issued to require a person—
- (a) to cease, or prohibit that person from commencing, anything done or to be done by or on behalf of that person that, in the opinion of the enforcement officer, contravenes or is likely to contravene a rule in a proposed plan; or
  - (b) to do something that, in the opinion of the enforcement officer, is necessary in order to ensure compliance by or on behalf of that person with a rule in a proposed plan.
- (3) An abatement notice may be made subject to such conditions as the enforcement officer serving it thinks fit.
- (4) An abatement notice shall not be served unless the enforcement officer has reasonable grounds for believing that any of the circumstances in subsection (1) or subsection (2) exist.

Section 322(1)(b): substituted, on 7 July 1993, by section 146(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 322(1)(c)(ii): amended, on 7 July 1993, by section 146(2) of the Resource Management Amendment Act 1993 (1993 No 65).

### **323 Compliance with abatement notice**

- (1) Subject to the rights of appeal in section 325, a person on whom an abatement notice is served shall—
  - (a) comply with the notice within the period specified in the notice; and
  - (b) unless the notice directs otherwise, pay all the costs and expenses of complying with the notice.
- (2) If a person against whom an abatement notice is made under section 322(1)(c) (which relates to the emission of noise), fails to comply with the notice, an enforcement officer may, without further notice, enter the place where the noise source is situated (with a constable if the place is a dwellinghouse), and—
  - (a) take all such reasonable steps as he or she considers necessary to cause the noise to be reduced to a reasonable level; and
  - (b) when accompanied by a constable, seize and impound the noise source.

### **324 Form and content of abatement notice**

Every abatement notice shall be in the prescribed form and shall state—

- (a) the name of the person to whom it is addressed; and
- (b) the reasons for the notice; and
- (c) the action required to be taken or ceased or not undertaken; and
- (d) the period within which the action must be taken or cease, having regard to the circumstances giving rise to the abatement notice, being a reasonable period to take the action required or cease the action; but must not be less than 7 days after the date on which the notice is served if the abatement notice is within the scope of section 322(1)(a)(ii) and the person against whom the notice is served is complying with this Act, any regulation, a rule in a plan, or a resource consent; and



- (e) the consequences of not complying with the notice or lodging a notice of appeal; and
- (f) the rights of appeal under section 325; and
- (g) in the case of a notice under section 322(1)(c), the rights of the local authority under section 323(2) on failure of the recipient to comply with the notice within the time specified in the notice; and
- (h) the name and address of the local authority or consent authority whose enforcement officer issued the notice.

Section 324(d): substituted, on 17 December 1997, by section 51(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 324(f): amended, on 17 December 1997, by section 51(2) of the Resource Management Amendment Act 1997 (1997 No 104).

### **325 Appeals**

- (1) Any person on whom an abatement notice is served may appeal to the Environment Court in accordance with subsection (2) against the whole or any part of the notice.
- (2) Notice of an appeal under subsection (1) shall be in the prescribed form and shall—
  - (a) state the reasons for the appeal and the relief sought; and
  - (b) state any matters required by regulations; and
  - (c) be lodged with the Environment Court and served on the local authority or consent authority whose decision is appealed within 15 working days of service of the abatement notice on the appellant.
- (3) An appeal against an abatement notice does not operate as a stay of the notice unless—
  - (a) the abatement notice is within the scope of section 322(1)(a)(ii) and the person against whom the notice is served is complying with this Act, any regulation, a rule in a plan, or a resource consent; or
  - (b) a stay is granted by an Environment Judge under subsection (3D).
- (3A) Any person who appeals under subsection (1) may also apply to an Environment Judge for a stay of the abatement notice pending the Environment Court's decision on the appeal

- (3B) An application for a stay must be in the prescribed form and must—
- (a) state the reasons why the person considers it is unreasonable for the person to comply with the abatement notice; and
  - (b) state the likely effect on the environment if the stay is granted; and
  - (c) be lodged with the Environment Court and served immediately on the local authority or consent authority whose abatement notice is appealed against.
- (3C) Where a person applies for a stay under subsection (3A), an Environment Judge must consider the application for a stay as soon as practicable after the application has been lodged.
- (3D) Before granting a stay, an Environment Judge must consider—
- (a) what the likely effect of granting a stay would be on the environment; and
  - (b) whether it is unreasonable for the person to comply with the abatement notice pending the decision on the appeal; and
  - (c) whether to hear—
    - (i) the applicant;
    - (ii) the local authority or consent authority whose abatement notice is appealed against; and
  - (d) such other matters as the Judge thinks fit.
- (3E) An Environment Judge may grant or refuse a stay and may impose any terms and conditions the Judge thinks fit.
- (3F) Any person to whom a stay is granted under subsection (3E) must serve a copy of it on the local authority or consent authority whose abatement notice is appealed against; and no such stay has legal effect until so served.
- (3G) Any stay granted under subsection (3E) remains in force until an order is made otherwise by the Environment Court.
- (3H) Notwithstanding section 309, any powers which may be exercised by an Environment Judge under this section may be exercised by an Environment Commissioner.

- (4) *[Repealed]*
- (5) Except as provided in subsection (6), the Environment Court must not confirm an abatement notice that is the subject of an appeal if—
- (a) the person served with the abatement notice was acting in accordance with—
    - (i) a rule in a plan; or
    - (ii) a resource consent; or
    - (iii) a designation; and
  - (b) the adverse effects in respect of which the notice was served were expressly recognised by the person who approved the plan, or notified the proposed plan, or granted the resource consent, or approved the designation, at the time of the approval, notification, or granting, as the case may be.
- (6) The Environment Court may confirm an abatement notice, that is the subject of an appeal, if the court considers it appropriate after having regard to the time that has elapsed and any change in circumstances since the approval, notification, or granting, as the case may be.

Section 325(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 325(2)(c): amended, on 17 December 1997, by section 52(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 325(2)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 325(3): substituted, on 17 December 1997, by section 52(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 325(3A): inserted, on 17 December 1997, by section 52(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 325(3B): inserted, on 17 December 1997, by section 52(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 325(3C): inserted, on 17 December 1997, by section 52(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 325(3D): inserted, on 17 December 1997, by section 52(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 325(3E): inserted, on 17 December 1997, by section 52(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 325(3F): inserted, on 17 December 1997, by section 52(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 325(3F): amended, on 1 October 2009, by section 136(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 325(3G): inserted, on 17 December 1997, by section 52(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 325(3H): inserted, on 17 December 1997, by section 52(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 325(4): repealed, on 1 October 2009, by section 136(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 325(5): substituted, on 1 August 2003, by section 84 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 325(6): added, on 1 August 2003, by section 84 of the Resource Management Amendment Act 2003 (2003 No 23).

### **325A Cancellation of abatement notice**

- (1) For the purposes of this section, **relevant authority** means the local authority or Minister of Conservation which or who authorised, under section 38, the enforcement officer who issued the abatement notice.
- (2) Where a relevant authority considers that an abatement notice is no longer required, the relevant authority may cancel the abatement notice at any time.
- (3) The relevant authority shall give written notice of its decision under subsection (2) to cancel an abatement notice to any person subject to that abatement notice.
- (4) Any person who is directly affected by an abatement notice may apply in writing to the relevant authority to change or cancel the abatement notice.
- (5) The relevant authority shall, as soon as practicable, consider the application having regard to the purpose for which the abatement notice was given, the effect of a change or cancellation on that purpose, and any other matter the relevant authority thinks fit; and the relevant authority may confirm, change, or cancel the abatement notice.
- (6) The relevant authority shall give written notice of its decision to the person who applied under subsection (4).
- (7) Where the relevant authority, after considering an application made under subsection (4) by a person who is directly affected by an abatement notice, confirms that abatement notice

or changes it in a way other than that sought by that person, that person may appeal to the Environment Court in accordance with section 325(2) against the whole or any part of the abatement notice.

Section 325A: inserted, on 7 July 1993, by section 148 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 325A(7): amended, on 10 August 2005, by section 118 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 325A(7): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**325B Restrictions on certain applications for enforcement orders and abatement notices**

- (1) No person may apply to the Environment Court for an enforcement order of a kind specified in any of paragraphs (a) to (d) of section 314(1), and no abatement notice shall be served on any person, in respect of anything done or to be done,—
  - (a) by or on behalf of the Director of Maritime New Zealand under section 248 or section 249 of the Maritime Transport Act 1994; or
  - (b) by or on behalf of any person in accordance with any instructions issued under either of those sections of that Act; or
  - (c) by or on behalf of any on-scene commander under section 305 or section 311 of that Act or in accordance with a direction given under section 310 of that Act; or
  - (d) by or on behalf of the master or owner of any ship, or the owner or operator of any oil transfer site or offshore installation, or any other person, in accordance with a direction given under section 305 or section 311 of that Act.
- (2) No person (other than the Minister, the Director of Maritime New Zealand, a local authority, or a consent authority) may apply to the Environment Court for an enforcement order to require any person to comply with or cease contravening section 15B (which imposes restrictions on discharges of harmful substances, contaminants, and water from ships and offshore installations).
- (3) No person may apply for an enforcement order of a kind specified in section 314(1)(d) in respect of any actual or reason-

able costs and expenses, where the costs and expenses which a person has incurred or is likely to incur constitute pollution damage (as defined in section 342 of the Maritime Transport Act 1994) in respect of which the owner of a CLC ship (as so defined) is liable in damages under Part 25 of that Act; and no order relating to such damage may be made by the Environment Court or any other court in any proceedings (including prosecutions for offences) under this Act.

Section 325B: inserted, on 20 August 1998, by section 17 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 325B(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 325B(1)(a): amended, on 1 July 2005, by section 11(3) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 325B(2): amended, on 1 July 2005, by section 11(3) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 325B(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 325B(3): substituted, on 17 December 1997, by section 53 of the Resource Management Amendment Act 1997 (1997 No 104).

### *Excessive noise*

#### **326 Meaning of excessive noise**

- (1) In this Act, the term **excessive noise** means any noise that is under human control and of such a nature as to unreasonably interfere with the peace, comfort, and convenience of any person (other than a person in or at the place from which the noise is being emitted), but does not include any noise emitted by any—
  - (a) aircraft being operated during, or immediately before or after, flight; or
  - (b) vehicle being driven on a road (within the meaning of section 2(1) of the Land Transport Act 1998); or
  - (c) train, other than when being tested (when stationary), maintained, loaded, or unloaded.
- (2) Without limiting subsection (1), **excessive noise**—
  - (a) includes noise that exceeds a standard for noise prescribed by a national environmental standard; and
  - (b) may include noise emitted by—
    - (i) a musical instrument; or

- (ii) an electrical appliance; or
- (iii) a machine, however powered; or
- (iv) a person or group of persons; or
- (v) an explosion or vibration.

Section 326(1)(b): amended, on 1 March 1999, by section 215(1) of the Land Transport Act 1998 (1998 No 110).

Section 326(1)(c): substituted, on 17 December 1997, by section 54 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 326(2): substituted, on 1 August 2003, by section 85 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 326(2)(a): amended, on 10 August 2005, by section 119 of the Resource Management Amendment Act 2005 (2005 No 87).

### **327 Issue and effect of excessive noise direction**

- (1) Any enforcement officer, or any constable acting upon the request of an enforcement officer, who—
  - (a) has received a complaint that excessive noise is being emitted from any place; and
  - (b) upon investigation of the complaint, is of the opinion that the noise is excessive,—may direct the occupier of the place from which the sound is being emitted, or any other person who appears to be responsible for causing the excessive noise, to immediately reduce the noise to a reasonable level.
- (2) A direction under subsection (1) may be given in writing or orally.
- (3) Every direction under subsection (1) shall prohibit the person to whom it is given, and every other person bound by the direction, from causing or contributing to the emission of excessive noise from or within the vicinity of the place at any time during the period of 72 hours or such shorter period as the enforcement officer or constable specifies, commencing at the time the direction is given.
- (4) The powers under this section are in addition to the powers under sections 322 to 325 to issue abatement notices relating to unreasonable noise and to seek an enforcement order under section 316.

**328 Compliance with an excessive noise direction**

- (1) Every person who is given a direction under section 327 shall immediately comply with the direction.
- (2) Every person who knows or ought to know that a direction under section 327 has been given in respect of a particular place shall comply with that direction as if he or she were the recipient of it, while on or in the vicinity of that place.
- (3) If a person against whom an excessive noise direction is made fails to comply immediately with the notice, an enforcement officer (accompanied by a constable), or a constable may enter the place without further notice and—
  - (a) seize and remove from the place; or
  - (b) render inoperable by the removal of any part from; or
  - (c) lock or seal so as to make unusable—  
any instrument, appliance, vehicle, aircraft, train, or machine that is producing or contributing to the excessive noise.
- (4) Where a direction under section 327 is unable to be given because there is no person occupying the place from which the sound is being emitted or the occupier of the place cannot reasonably be identified, and there is no other person who appears to be responsible for causing the excessive noise, an enforcement officer (accompanied by a constable) or a constable may enter the place without notice and—
  - (a) seize and remove from the place; or
  - (b) render inoperable by the removal of any part from; or
  - (c) lock or seal so as to make unusable—  
any instrument, appliance, vehicle, aircraft, train, or machine that is producing or contributing to the excessive noise.
- (5) Where any enforcement officer or constable enters any place under subsection (4), he or she must leave in that place, in a prominent position,—
  - (a) a copy of the relevant written excessive noise direction issued under section 327; and
  - (b) a written notice stating—
    - (i) the date and time of the entry;
    - (ii) the name of the person in charge of the entry;
    - (iii) the actions taken to ensure compliance with the excessive noise direction:



- (iv) the address of the office at which inquiries may be made in relation to the entry.
- (6) Any enforcement officer or constable exercising any power under this section may use such assistance as is reasonably necessary.
- (7) Any constable may, in exercising any power under this section, use such force as is reasonable in the circumstances.

Section 328 heading: amended, on 7 July 1993, by section 149 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 328(4): substituted, on 17 December 1997, by section 55 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 328(5): substituted, on 17 December 1997, by section 55 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 328(6): added, on 7 July 1993, by section 149 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 328(7): added, on 7 July 1993, by section 149 of the Resource Management Amendment Act 1993 (1993 No 65).

### *Water shortage*

#### **329 Water shortage direction**

- (1) Where a regional council considers that at any time there is a serious temporary shortage of water in its region or any part of its region, the regional council may issue a direction for either or both of the following:
  - (a) that the taking, use, damming, or diversion of water:
  - (b) that the discharge of any contaminant into water,—is to be apportioned, restricted, or suspended to the extent and in the manner set out in the direction.
- (2) A direction may relate to any specified water, to water in any specified area, or to water in any specified water body.
- (3) A direction may not last for more than 14 days but may be amended, revoked, or renewed by the regional council by a subsequent direction.
- (4) A direction comes into force on its issue and continues in force until it expires or is revoked.
- (5) A direction may be issued by any means the regional council thinks appropriate, but notice of the particulars of the direction shall be given to all persons required to apportion, restrict, or suspend—

- (a) the taking, use, damming, or diversion of water; or
  - (b) the discharge of any contaminant into water,—
- as far as they can be ascertained, as soon as practicable after its issue.
- (6) For the purpose of this section, notice may be given to a person by serving it on the person or by publishing the notice in 1 or more daily newspapers circulating in the area where the person takes, uses, dams, or diverts the water, or discharges a contaminant into water.

*Emergency works*

**330 Emergency works and power to take preventive or remedial action**

- (1) Where—
  - (a) any public work for which any person has financial responsibility; or
  - (b) any natural and physical resource or area for which a local authority or consent authority has jurisdiction under this Act; or
  - (c) any project or work or network utility operation for which any network utility operator is approved as a requiring authority under section 167—is, in the opinion of the person or the authority or the network utility operator, affected by or likely to be affected by—
  - (d) an adverse effect on the environment which requires immediate preventive measures; or
  - (e) an adverse effect on the environment which requires immediate remedial measures; or
  - (f) any sudden event causing or likely to cause loss of life, injury, or serious damage to property—the provisions of sections 9, 12, 13, 14, and 15 shall not apply to any activity undertaken by or on behalf of that person, authority, or network utility operator to remove the cause of, or mitigate any actual or likely adverse effect of, the emergency.
- (1A) Subsection (1) applies whether or not the adverse effect or sudden event was foreseeable.
- (2) Where a local authority or consent authority—
  - (a) has financial responsibility for any public work; or

- (b) has jurisdiction under this Act in respect of any natural and physical resource or area—  
which is, in the reasonable opinion of that local authority or consent authority, likely to be affected by any of the conditions described in paragraphs (d) to (f) of subsection (1), the local authority or consent authority by its employees or agents may, without prior notice, enter any place (including a dwelling-house when accompanied by a constable) and may take such action, or direct the occupier to take such action, as is immediately necessary and sufficient to remove the cause of, or mitigate any actual or likely adverse effect of, the emergency.
- (2A) Sections 9, 12, 13, 14, and 15 do not apply to any action taken under subsection (2).
- (3) As soon as practicable after entering any place under this section, every person must identify himself or herself and inform the occupier of the place of the entry and the reasons for it.
- (4) Nothing in this section shall authorise any person to do anything in relation to an emergency involving a marine oil spill or suspected marine oil spill within the meaning of section 281 of the Maritime Transport Act 1994.

Section 330 heading: amended, on 20 August 1998, by section 18 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 330(1)(c): amended, on 7 July 1993, by section 150(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 330(1)(f): amended, on 7 July 1993, by section 150(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 330(1A): inserted, on 10 August 2005, by section 120(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 330(2A): inserted, on 10 August 2005, by section 120(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 330(4): added, on 20 August 1998, by section 18 of the Resource Management Amendment Act 1994 (1994 No 105).

### **330A Resource consents for emergency works**

- (1) Where an activity is undertaken under section 330, the person (other than the occupier), authority, or network utility operator who or which undertook the activity shall advise the appropriate consent authority, within 7 days, that the activity has been undertaken.

- (2) Where such an activity, but for section 330, contravenes any of sections 9, 12, 13, 14, and 15 and the adverse effects of the activity continue, then the person (other than the occupier), authority, or network utility operator who or which undertook the activity shall apply in writing to the appropriate consent authority for any necessary resource consents required in respect of the activity within 20 working days of the notification under subsection (1).
- (3) If the application is made within the time stated in subsection (2), the activity may continue until the application for a resource consent and any appeals have been finally determined.

Section 330A: inserted, on 7 July 1993, by section 151 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 330A(1): amended, on 10 August 2005, by section 121(1)(a) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 330A(1): amended, on 10 August 2005, by section 121(1)(b) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 330A(2): amended, on 10 August 2005, by section 121(2)(a) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 330A(2): amended, on 10 August 2005, by section 121(2)(b) of the Resource Management Amendment Act 2005 (2005 No 87).

### **330B Emergency works under Civil Defence Emergency Management Act 2002**

- (1) If any activity is undertaken by any person exercising emergency powers during a state of emergency declared under the Civil Defence Emergency Management Act 2002, the provisions of sections 9, 12, 13, 14, and 15 do not apply to any activity undertaken by or on behalf of that person to remove the cause of, or mitigate any actual or adverse effect of, the emergency.
- (2) If an activity is undertaken to which subsection (1) applies, the person who authorised the activity must advise the appropriate consent authority, within 7 days, that the activity has been undertaken.
- (3) If such an activity, but for this section, would contravene any of sections 9, 12, 13, 14, and 15 and the adverse effects of the activity continue, the person who authorised the activity must apply in writing to the appropriate consent authority for any necessary resource consents required in respect of the activity,

within 20 working days of the notification under subsection (2).

- (4) If the application is made within the time stated in subsection (3), the activity may continue until the application for a resource consent and any appeals have been finally determined.
- (5) A person does not commit an offence under section 338(1)(a) by acting in accordance with this section.

Section 330B: inserted, on 1 December 2002, by section 117 of the Civil Defence Emergency Management Act 2002 (2002 No 33).

### **331 Reimbursement or compensation for emergency works**

- (1) Where the local authority or consent authority takes action under section 330(2) because of the default of any person, the authority may require reimbursement from that person of its actual and reasonable costs (as defined in section 314(2)).
- (1A) Where the costs required to be paid under subsection (1) are not duly paid within 20 working days of being required, the authority may seek an enforcement order under section 314(1)(d).
- (2) Every—
  - (a) person having an estate or interest in land that is injuriously affected by the exercise of any power under section 330(2); and
  - (b) other person suffering any damage as a result of the exercise of that power—shall be entitled to compensation from the authority in respect of any damage which did not arise from any failure of that person to abide by his or her duties under the Act.
- (3) Any compensation under subsection (2) shall be claimed and determined in accordance with Part 5 of the Public Works Act 1981 and the provisions of that Act, so far as they apply and with all necessary modifications, shall apply accordingly.

Section 331(1): amended, on 7 July 1993, by section 152(1)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 331(1): amended, on 7 July 1993, by section 152(1)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 331(1A): inserted, on 7 July 1993, by section 152(2) of the Resource Management Amendment Act 1993 (1993 No 65).

*Powers of entry and search***332 Power of entry for inspection**

- (1) Any enforcement officer, specifically authorised in writing by any local authority or consent authority to do so, may at all reasonable times go on, into, under, or over any place or structure, except a dwellinghouse, for the purpose of inspection to determine whether or not—
- (a) this Act, any regulations, a rule of a plan, a resource consent, section 10 (certain existing uses protected), or section 10A (certain existing activities allowed), or section 20A (certain lawful existing activities allowed) is being complied with; or
  - (b) an enforcement order, interim enforcement order, abatement notice, or water shortage direction is being complied with; or
  - (c) any person is contravening a rule in a proposed plan in a manner prohibited by any of sections 9, 12(3), 14(1), 15(2), and 15(2A).
  - (d) *[Repealed]*
- (2) For the purposes of subsection (1), an enforcement officer may take samples of water, air, soil, or organic matter.
- (2A) Where a sample is taken under subsection (2), an enforcement officer may also take a sample of any substance that the enforcement officer has reasonable cause to suspect is a contaminant of any water, air, soil, or organic matter.
- (3) Every enforcement officer who exercises any power of entry under this section shall produce for inspection his or her warrant of appointment and written authorisation upon initial entry and in response to any later reasonable request.
- (4) If the owner or occupier of a place subject to inspection is not present at the time of the inspection, the enforcement officer shall leave in a prominent position at the place or attached to the structure, a written notice showing the date and time of the inspection and the name of the officer carrying out the inspection.
- (5) An enforcement officer may not enter, unless the permission of the landowner is obtained, any land which any other Act states may not be entered without that permission.

- (6) Any enforcement officer exercising any power under this section may use such assistance as is reasonably necessary.

Section 332(1)(a): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 332(1)(a): amended, on 7 July 1993, by section 153(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 332(1)(c): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 332(1)(c): amended, on 1 October 2009, by section 137 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 332(1)(d): repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 332(2): amended, on 7 July 1993, by section 153(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 332(2A): inserted, on 7 July 1993, by section 153(3) of the Resource Management Amendment Act 1993 (1993 No 65).

### **333 Power of entry for survey**

- (1) For any purpose connected with the preparation, change, or review of a policy statement or plan, any enforcement officer specifically authorised in writing by any local authority or consent authority to do so, may do all or any of the following:
- (a) carry out surveys, investigations, tests, or measurements:
  - (b) take samples of any water, air, soil, or vegetation:
  - (c) enter or re-enter land (except a dwellinghouse),—  
at any reasonable time, with or without such assistance, vehicles, appliances, machinery, and equipment as is reasonably necessary for that purpose.
- (1A) *[Repealed]*
- (2) Reasonable written notice shall be given to the occupier of land to be entered under subsection (1)—
- (a) that entry on to the land is authorised under this section:
  - (b) of the purpose for which entry is required:
  - (c) how and when entry is to be made.
- (3) Every enforcement officer who exercises any power of entry under this section shall produce for inspection his or her warrant of appointment and written authorisation upon initial entry and in response to any later reasonable request.

Section 333(1A): repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

### **334 Application for warrant for entry for search**

- (1) Any District Court Judge or any duly authorised Justice or any Community Magistrate or Registrar who, on an application in writing made on oath, is satisfied that there is reasonable ground for believing that there is in, on, under, or over any place or vehicle anything—
  - (a) in respect of which an offence has been or is suspected of having been committed against this Act or regulations that is punishable by imprisonment; or
  - (b) which there is reasonable grounds to believe will be evidence of an offence against this Act or regulations that is punishable by imprisonment; or
  - (c) anything which there is reasonable ground to believe is intended to be used for the purpose of committing an offence against this Act or regulations that is punishable by imprisonment—may issue a warrant authorising the entry and search of any place or vehicle on 1 occasion within 14 days of the date of issue of the warrant and at any time which is reasonable in the circumstances.
- (2) Any warrant issued under subsection (1) shall be subject to such conditions as the issuer may specify in the warrant.
- (3) Any person applying for a warrant under subsection (1) shall, having made reasonable enquiries, disclose on the application—
  - (a) details of every other application which that person knows to have been made within the previous 20 days in respect of the place or vehicle specified; and
  - (b) the offence or offences alleged in every such application; and
  - (c) the result of every such application.

Section 334(1): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).



**335 Content and effect of warrant for entry for search**

- (1) Every warrant under section 334 shall be directed to and executed by—
  - (a) any specified constable; or
  - (b) any specified enforcement officer when accompanied by a constable; or
  - (c) generally, every constable; or
  - (d) generally, every enforcement officer when accompanied by a constable.
- (2) Every warrant under section 334 shall authorise the person executing the warrant to—
  - (a) use such assistance as is necessary in the circumstances; and
  - (b) use such force both for making entry and for breaking open anything in, on, under, or over the place or vehicle as is reasonable in the circumstances; and
  - (c) search for and seize anything referred to in the warrant and, while at the place pursuant to the warrant, to seize any other thing that the person believes on reasonable grounds to be evidence in respect of which that person could have obtained a warrant under section 334.
- (3) Every person called upon to assist in the execution of the warrant shall have the powers contained in subsection (2)(b) and (c).
- (4) It shall be the duty of every person executing any warrant to—
  - (a) produce it for inspection upon initial entry and in response to any later reasonable request and, when requested, to provide a copy of the warrant no later than 7 days after the making of the request; or
  - (b) if the owner or occupier is not present at the time of the entry and search, leave in a prominent position at the place or attached to the vehicle subject to the warrant, a written notice showing the date and time of the execution of the warrant, the name of the person in charge of the entry and search, and the address of the office where inquiries can be made; and
  - (c) if the owner or occupier is not present at the time of the entry and search, inform the owner or occupier within

7 days, by written notice delivered, left in a prominent position, or sent by registered mail, of—

- (i) anything seized upon execution of the warrant; and
- (ii) from where it was seized; and
- (iii) where it is held,—

unless a District Court Judge orders otherwise because of exceptional circumstances.

- (5) If the person executing the warrant believes leaving a notice as required under subsection (4)(b) would unduly prejudice subsequent investigations, that person may refrain from leaving a notice and apply to a District Court Judge within 7 days for confirmation of that decision. If such an application is refused, the person who executed the warrant shall notify or cause to be notified immediately the owner or occupier of the place or vehicle subject to the warrant of the particulars referred to in subsection (4).

Section 335(2)(c): amended, on 7 July 1993, by section 154 of the Resource Management Amendment Act 1993 (1993 No 65).

### *Return of property*

#### **336 Return of property seized under sections 323 and 328**

- (1) Where any property is seized and impounded under section 323 or section 328 (which relate to failure to comply with an abatement notice to reduce noise or an excessive noise direction), the owner of the property or person from whom it was seized may apply to the local authority, consent authority, or Police station where the property is held, at any time, to have the property returned to him or her.
- (2) Where an application is made under subsection (1), the local authority, consent authority, or constable with authority to do so, shall arrange for the return of the property if—
- (a) satisfied that the return of the property is not likely to lead to a resumption of the emission of noise beyond a reasonable level; and
  - (b) the applicant has paid all costs incurred by the local authority, consent authority, or Police in seizing, impounding, transporting, and storing the property.

- (3) Where the local authority, consent authority, or constable with authority to do so, refuses to return the property for the reason specified in subsection (2)(a), the applicant may make an application to the Environment Court, and subsections (2) and (4) of section 325 apply as if—
  - (a) the references to service of the abatement notice on the appellant were references to any refusal under this section; and
  - (b) the time limit for lodging the application were 6 months from the date of seizure.
- (4) The Environment Court on an application under subsection (3) may—
  - (a) order the return of the property subject to any conditions relating to the continued reduction of noise as it thinks fit; or
  - (b) refuse the application for the return of the property.
- (5) Where—
  - (a) any property seized under section 323 or section 328 is not claimed within 6 months of its seizure; or
  - (b) the return of the property has been refused under subsection (3) and no application has been lodged within 6 months of the date of seizure; or
  - (c) the Environment Court has refused the return of the property under subsection (4)(b),—the local authority, consent authority, or the Police may dispose of the property in accordance with subsection (6).
- (6) Any local authority, consent authority, or constable wishing to dispose of property under subsection (5)—
  - (a) shall give written notice to the person from whom the property was seized, where the person's address is known; and
  - (b) may sell or cause the property to be otherwise disposed of; and
  - (c) may, where any proceeds are realised, apply these to the payment of costs and expenses incurred in selling the property under this section and any costs incurred in seizing, impounding, transporting, and storing the property; and

- (d) shall, on demand, pay the remainder of the proceeds to the person from whom the property was seized.

Section 336(2): amended, on 1 October 2008, pursuant to section 116(a)(iv) of the Policing Act 2008 (2008 No 72).

Section 336(3): amended, on 1 October 2008, pursuant to section 116(a)(iv) of the Policing Act 2008 (2008 No 72).

Section 336(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 336(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 336(5)(c): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 336(6): amended, on 1 October 2008, pursuant to section 116(a)(iv) of the Policing Act 2008 (2008 No 72).

### **337 Return of property seized under warrant**

- (1) Where anything is seized under a warrant issued under section 334, it shall be detained under the custody of a constable, except while it is being used in evidence or is in the custody of any court, until it is disposed of under this section.
- (2) In any proceedings for an offence relating to anything seized under a warrant issued under section 334, the court may order, either at the hearing or on application, that the thing be delivered to the person appearing to the court to be entitled to it, or that it be otherwise disposed of in such manner as the court thinks fit.
- (3) Any constable may at any time, unless an order has been made under subsection (2), return the thing to the person from whom it was seized, or apply to a District Court Judge for an order as to its disposal. On any such application, the District Court Judge may make any order that a court may make under subsection (2).
- (4) If proceedings for an offence relating to the thing are not brought within a period of 3 months of seizure, any person claiming to be entitled to the thing may, after the expiration of that period, apply to a District Court Judge for an order that it be delivered to him or her.
- (5) Where any person is convicted in any proceedings for an offence relating to anything in respect of which a warrant has

- been issued enabling seizure, and any order is made under this section, the operation of the order shall be suspended until—
- (a) the expiration of the time prescribed by this Act for the filing of notice of appeal; and
  - (b) where notice of appeal is filed within the prescribed time, until the determination of the appeal.
- (6) Where the operation of any such order is suspended until the determination of the appeal, the court determining the appeal may by order, cancel or vary the order.

### *Offences*

#### **338 Offences against this Act**

- (1) Every person commits an offence against this Act who contravenes, or permits a contravention of, any of the following:
  - (a) sections 9, 11, 12, 13, 14, and 15 (which impose duties and restrictions in relation to land, subdivision, the coastal marine area, the beds of certain rivers and lakes, water, and discharges of contaminants):
  - (b) any enforcement order:
  - (c) any abatement notice, other than a notice under section 322(1)(c):
  - (d) any water shortage direction under section 329.
- (1A) Every person commits an offence against this Act who contravenes or permits a contravention of section 15A or section 15C (which impose restrictions in relation to waste or other matter).
- (1B) Where any harmful substance or contaminant or water is discharged in the coastal marine area in breach of section 15B, the following persons each commit an offence:
  - (a) if the discharge is from a ship, the master and the owner of the ship:
  - (b) if the discharge is from an offshore installation, the owner of the installation.
- (2) Every person commits an offence against this Act who contravenes, or permits a contravention of, any of the following:
  - (a) section 22, which relates to failure to provide certain information to an enforcement officer:
  - (b) section 42, which relates to the protection of sensitive information:

- (c) any excessive noise direction under section 327:
  - (d) any abatement notice for unreasonable noise under section 322(1)(c):
  - (e) any order (other than an enforcement order) made by the Environment Court.
- (3) Every person commits an offence against this Act who—
- (a) wilfully obstructs, hinders, resists, or deceives any person in the execution of any powers conferred on that person by or under this Act:
  - (b) contravenes, or permits a contravention of, any of the following:
    - (i) section 283, which relates to non-attendance or refusal to co-operate with the Environment Court:
    - (ii) any summons or order to give evidence issued or made pursuant to section 41:
  - (c) contravenes, or permits a contravention of, any provision (as provided in Schedule 10) specified in an instrument for the creation of an esplanade strip or in an easement for an access strip, or enters a strip which is closed under section 237C.
- (4) Notwithstanding anything in the Summary Proceedings Act 1957, any information in respect of any offence against subsection (1), (1A), or (1B) may be laid by any person at any time within 6 months after the time when the contravention giving rise to the information first became known, or should have become known, to the local authority or consent authority.

Section 338(1A): inserted, on 20 August 1998, by section 19 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 338(1B): inserted, on 20 August 1998, by section 19 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 338(2)(e): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 338(3)(b)(i): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 338(3)(c): added, on 7 July 1993, by section 155 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 338(4): amended, on 1 October 2009, by section 138 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**339 Penalties**

- (1) Every person who commits an offence against section 338(1), (1A), or (1B) is liable on conviction,—
  - (a) in the case of a natural person, to imprisonment for a term not exceeding 2 years or a fine not exceeding \$300,000;
  - (b) in the case of a person other than a natural person, to a fine not exceeding \$600,000.
- (1A) Every person who commits an offence against section 338(1), (1A), or (1B) is also liable on conviction, if the offence is a continuing one, to a fine not exceeding \$10,000 for every day or part of a day during which the offence continues.
- (2) Every person who commits an offence against section 338(2) is liable on summary conviction to a fine not exceeding \$10,000, and, if the offence is a continuing one, to a further fine not exceeding \$1,000 for every day or part of a day during which the offence continues.
- (3) Every person who commits an offence against section 338(3) is liable on summary conviction to a fine not exceeding \$1,500.
- (4) A court may sentence any person who commits an offence against this Act to a sentence of community work, and the provisions of Part 2 of the Sentencing Act 2002, with all necessary modifications, apply accordingly.
- (5) If a person is convicted of an offence against section 338, the court may, instead of or in addition to imposing a fine or a term of imprisonment, make 1 or more of the following orders:
  - (a) the orders specified in section 314;
  - (b) an order requiring a consent authority to serve notice, under section 128(2), of the review of a resource consent held by the person, but only if the offence involves an act or omission that contravenes the consent.
- (6) The continued existence of anything, or the intermittent repetition of any actions, contrary to any provision of this Act shall be deemed to be a continuing offence.

Section 339(1): substituted, on 1 October 2009, by section 139(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 339(1A): inserted, on 1 October 2009, by section 139(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 339(4): substituted, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 339(5): substituted, on 1 October 2009, by section 139(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **339A Protection against imprisonment for dumping and discharge offences involving foreign ships**

- (1) No person shall be imprisoned for any offence of contravening or permitting a contravention of section 15A or section 15B involving a foreign ship unless the court is satisfied that—
- (a) either—
    - (i) the person intended to commit the offence; or
    - (ii) the offence occurred as a consequence of any reckless act or omission by that person with the knowledge that that act or omission would or would be likely to cause a significant or irreversible adverse effect on the coastal marine area; and
  - (b) the commission of the offence has had or is likely to have a significant or irreversible adverse effect on the coastal marine area.
- (2) In this section, **foreign ship** has the same meaning as in section 2(1) of the Maritime Transport Act 1994.

Section 339A: inserted, on 20 August 1998, by section 21 of the Resource Management Amendment Act 1994 (1994 No 105).

### **339B Additional penalty for certain offences for commercial gain**

- (1) Where a person is convicted of an offence against section 338(1A) or (1B), the court may, in addition to any penalty which the court may impose under section 339, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of the offence if the court is satisfied that the offence was committed in the course of producing a commercial gain.



- (2) For the purposes of subsection (1), the value of any gain shall be assessed by the court, and any amount ordered to be paid shall be recoverable in the same manner as a fine.

Section 339B: inserted, on 20 August 1998, by section 21 of the Resource Management Amendment Act 1994 (1994 No 105).

**339C Amount of fine or other monetary penalty recoverable by distress and sale of ship or from agent**

- (1) Where—
- (a) the master or owner of a ship is convicted of an offence against section 338 in respect of any contravention of section 15A or section 15B or section 15C; and
  - (b) any fine or other monetary penalty imposed by a court under section 339 or section 339B in respect of that offence is not paid on time,—
- the court may order that the amount of the fine so unpaid be levied by distress and sale of the ship and its equipment.
- (2) Without limiting subsection (1), where any master or owner of a ship—
- (a) is convicted of an offence against section 338 in respect of any contravention of section 15A or section 15B or section 15C; and
  - (b) fails to pay the full amount of any fine or other monetary penalty imposed by the court under section 339 or section 339B,—
- the agent of the ship shall be civilly liable to pay to the Crown or, where a local authority caused the information in respect of that offence to be laid, to that local authority, such amount of that fine or monetary penalty as remains unpaid and the Crown or that local authority may recover that amount from that agent as a debt.
- (3) Every agent of a ship who, under this section, pays the whole or part of any fine or other monetary penalty imposed on the master or owner of the ship shall be entitled to recover the amount so paid from that master or owner as a debt or deduct that amount out of or from any money which is or becomes payable by that agent to that master or owner; and any amount so paid by the agent shall, for the purposes of section 4(1)(p)

of the Admiralty Act 1973, be deemed to be a disbursement made on account of the ship.

- (4) Any District Court shall have jurisdiction to hear and determine proceedings for the recovery, in accordance with this section, of any money from any agent or master or owner of a ship whatever the amount of money involved.
- (5) This section shall apply notwithstanding any enactment or rule of law.

Section 339C: inserted, on 20 August 1998, by section 21 of the Resource Management Amendment Act 1994 (1994 No 105).

### **340 Liability of principal for acts of agents**

- (1) Where an offence is committed against this Act—
  - (a) by any person acting as the agent (including any contractor) or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he, she, or it had personally committed the offence; or
  - (b) by any person while in charge of a ship, the owner of the ship shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he, she, or it had personally committed the offence.
- (2) Despite anything in subsection (1), if proceedings are brought under that subsection, it is a good defence if—
  - (a) the defendant proves,—
    - (i) in the case of a natural person (including a partner in a firm),—
      - (A) that he or she did not know, and could not reasonably be expected to have known, that the offence was to be or was being committed; or
      - (B) that he or she took all reasonable steps to prevent the commission of the offence; or
    - (ii) in the case of a person other than a natural person,—
      - (A) that neither the directors (if any) nor any person involved in the management of the

- defendant knew, or could reasonably be expected to have known, that the offence was to be or was being committed; or
- (B) that the defendant took all reasonable steps to prevent the commission of the offence; and
- (b) the defendant proves that the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.
- (3) If a person other than a natural person is convicted of an offence against this Act, a director of the defendant (if any), or a person involved in the management of the defendant, is guilty of the same offence if it is proved—
- (a) that the act or omission that constituted the offence took place with his or her authority, permission, or consent; and
- (b) that he or she knew, or could reasonably be expected to have known, that the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

Section 340(1): substituted, on 20 August 1998, by section 22 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 340(1)(a): amended, on 17 December 1997, by section 57(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 340(2): substituted, on 1 October 2009, by section 140 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 340(3): substituted, on 1 October 2009, by section 140 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **341 Strict liability and defences**

- (1) In any prosecution for an offence of contravening or permitting a contravention of any of sections 9, 11, 12, 13, 14, and 15, it is not necessary to prove that the defendant intended to commit the offence.
- (2) Subject to subsection (3), it is a defence to prosecution of the kind referred to in subsection (1), if the defendant proves—
- (a) that—

- (i) the action or event to which the prosecution relates was necessary for the purposes of saving or protecting life or health, or preventing serious damage to property or avoiding an actual or likely adverse effect on the environment; and
  - (ii) the conduct of the defendant was reasonable in the circumstances; and
  - (iii) the effects of the action or event were adequately mitigated or remedied by the defendant after it occurred; or
- (b) that the action or event to which the prosecution relates was due to an event beyond the control of the defendant, including natural disaster, mechanical failure, or sabotage, and in each case—
  - (i) the action or event could not reasonably have been foreseen or been provided against by the defendant; and
  - (ii) the effects of the action or event were adequately mitigated or remedied by the defendant after it occurred.
- (3) Except with the leave of the court, subsection (2) does not apply unless, within 7 days after the service of the summons or within such further time as the court may allow, the defendant delivers to the prosecutor a written notice—
  - (a) stating that he or she intends to rely on subsection (2); and
  - (b) specifying the facts that support his or her reliance on subsection (2).

Section 341(2)(b): amended, on 7 July 1993, by section 156 of the Resource Management Amendment Act 1993 (1993 No 65).

### **341A Liability and defences for dumping and storage of waste or other matter**

It is a defence to prosecution for an offence of contravening or permitting a contravention of section 15A if the defendant proves that the act or omission which is alleged to constitute the offence—

- (a) was necessary—
  - (i) to save or prevent danger to human life; or

- (ii) to avert a serious threat to any ship, aircraft, or offshore installation; or
  - (iii) in the case of force majeure caused by stress of weather, to secure the safety of any ship, aircraft, or offshore installation; and
- (b) was a reasonable step to take in all the circumstances; and
- (c) was likely to result in less damage than would otherwise have occurred; and
- (d) was taken or omitted in such a way that the likelihood of damage to human or marine life was minimised.

Section 341A: inserted, on 20 August 1998, by section 23 of the Resource Management Amendment Act 1994 (1994 No 105).

**341B Liability and defences for discharging harmful substances**

- (1) In any prosecution for an offence against section 338(1B) (which relates to the discharge of harmful substances, contaminants, or water, in breach of section 15B) it is not necessary to prove that the defendant intended to commit the offence.
- (2) It is a defence to prosecution for an offence against section 338(1B) if the defendant proves that—
  - (a) the harmful substance or contaminant or water was discharged for the purpose of securing the safety of a ship or an offshore installation, or for the purpose of saving life and that the discharge was a reasonable step to effect that purpose; or
  - (b) the harmful substance or contaminant or water escaped as a consequence of damage to a ship or its equipment or to an offshore installation or its equipment; and—
    - (i) such damage occurred without the negligence or deliberate act of the defendant; and
    - (ii) as soon as practicable after that damage occurred, all reasonable steps were taken to prevent the escape of the harmful substance or contaminant or water or, if any such escape could not be prevented, to minimise any escape.

Section 341B: inserted, on 20 August 1998, by section 23 of the Resource Management Amendment Act 1994 (1994 No 105).

**342 Fines to be paid to local authority instituting prosecution**

- (1) Subject to subsection (2), where a person is convicted of an offence under section 338 and the court imposes a fine, the court shall, if the information for that offence was laid on behalf of a local authority, order that the fine be paid to that local authority.
- (2) There shall be deducted from every amount payable to a local authority under subsection (1), a sum equal to 10% thereof, and this sum shall be credited to a Crown Bank Account.
- (3) Notwithstanding anything in subsection (2), where any money awarded by a court in respect of any loss or damage is recovered as a fine, and that fine is ordered to be paid to a local authority under subsection (1), no deduction shall be made under subsection (2) in respect of that money.
- (4) Subject to subsection (2), an order of the court made under subsection (1) shall be sufficient authority for the Registrar receiving the fine to pay that fine to the local authority entitled to it under the order.
- (5) Nothing in section 73 of the Public Finance Act 1989 shall apply to any fine ordered to be paid to any local authority under subsection (1).

Section 342(2): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

**343 Discharges from ships**

*[Repealed]*

Section 343: repealed, on 20 August 1998, by section 24 of the Resource Management Amendment Act 1994 (1994 No 105).

*Infringement offences*

Heading: inserted, on 2 September 1996, by section 18 of the Resource Management Amendment Act 1996 (1996 No 160).

**343A Infringement offences**

In sections 343B to 343D—

**infringement fee**, in relation to an infringement offence, means the amount fixed by regulations made under section 360(1)(bb), as the infringement fee for the offence

**infringement offence** means an offence specified as such in regulations made under section 360(1)(ba).

Section 343A: inserted, on 2 September 1996, by section 18 of the Resource Management Amendment Act 1996 (1996 No 160).

### **343B Commission of infringement offence**

Where any person is alleged to have committed an infringement offence, that person may either—

- (a) be proceeded against for the alleged offence under the Summary Proceedings Act 1957; or
- (b) be served with an infringement notice as provided for in section 343C.

Section 343B: inserted, on 2 September 1996, by section 18 of the Resource Management Amendment Act 1996 (1996 No 160).

### **343C Infringement notices**

- (1) Where an enforcement officer observes a person committing an infringement offence, or has reasonable cause to believe such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be served on that person.
- (2) Any enforcement officer (not necessarily the officer who issued the notice) may deliver the infringement notice (or a copy of it) to the person alleged to have committed an infringement offence personally or by post addressed to that person's last known place of residence or business; and, in that case, for the purposes of the Summary Proceedings Act 1957, it (or the copy) shall be deemed to have been served on that person when it was posted.
- (3) Every infringement notice shall be in the prescribed form and shall contain the following particulars:
  - (a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence; and
  - (b) the amount of the infringement fee specified for that offence; and
  - (c) the address of the place at which the infringement fee may be paid; and

- (d) the time within which the infringement fee must be paid; and
  - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957; and
  - (f) a statement that the person served with the notice has a right to request a hearing; and
  - (g) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing; and
  - (h) such other particulars as are prescribed.
- (4) If an infringement notice has been issued under this section,—
- (a) a reminder notice must be in the form prescribed under this Act; and
  - (b) proceedings in respect of the offence to which the infringement notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957, and the provisions of that section apply with all necessary modifications.

Section 343C: inserted, on 2 September 1996, by section 18 of the Resource Management Amendment Act 1996 (1996 No 160).

Section 343C(4): substituted, on 9 October 2006, by section 36(1) of the Summary Proceedings Amendment Act 2006 (2006 No 13).

### **343D Entitlement to infringement fees**

A local authority shall be entitled to retain all infringement fees received by it in respect of infringement offences where the infringement notice was issued by an enforcement officer of that authority.

Section 343D: inserted, on 2 September 1996, by section 18 of the Resource Management Amendment Act 1996 (1996 No 160).

## **Part 13**

### **Hazards Control Commission**

*[Repealed]*

Part 13: repealed, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).



**344 Interpretation**

*[Repealed]*

Section 344: repealed, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

**345 Purpose and principles**

*[Repealed]*

Section 345: repealed, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

**346 Establishment of Commission**

*[Repealed]*

Section 346: repealed, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

**347 Functions of Commission**

*[Repealed]*

Section 347: repealed, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

**348 Membership of Commission**

*[Repealed]*

Section 348: repealed, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

**349 Compliance with policy directions**

*[Repealed]*

Section 349: repealed, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

**350 Further provisions applying in respect of Commission**

*[Repealed]*

Section 350: repealed, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

**351 Regulations**

*[Repealed]*

Section 351: repealed, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

## Part 14

### Miscellaneous provisions

#### 352 Service of documents

- (1) Where a notice or other document is to be served on a person for the purposes of this Act, it may be served—
  - (a) by delivering it personally to the person (other than a Minister of the Crown); or
  - (b) by delivering it at the usual or last known place of residence or business of the person; or
  - (c) by sending it by pre-paid post addressed to the person at the usual or last known place of residence or business of the person; or
  - (ca) *[Repealed]*
  - (d) by posting it to the Post Office box address that the person has specified as an address for service; or
  - (e) by leaving it at a document exchange for direction to the document exchange box number that the person has specified as an address for service; or
  - (f) by sending it to the fax number that the person has specified as an address for service; or
  - (g) by sending it to the email address that the person has specified as an address for service; or
  - (h) by serving it in the manner that the Environment Court directs in the particular case.
- (2) Where a notice or other document is to be served on a Minister of the Crown for the purposes of this Act, service on the chief executive of the appropriate department of the Public Service in accordance with subsection (1) shall be deemed to be service on the Minister.
- (3) Where a notice or other document is to be served on a body (whether incorporated or not) for the purposes of this Act, service on an officer of the body, or on the registered office of the body, in accordance with subsection (1) shall be deemed to be service on the body.
- (4) Where a notice or other document is to be served on a partnership for the purposes of this Act, service on any one of the partners in accordance with subsections (1) and (3) shall be deemed to be service on the partnership.

- (4A) Despite subsection (1), if a notice or other document is to be served on a Crown organisation for the purposes of this Act, it may be served—
- (a) by delivering it at the organisation's head office or principal place of business; or
  - (b) by sending it to the fax number or email address that the organisation has specified for its head office or principal place of business; or
  - (c) by a method agreed between the organisation and the person serving the notice or document.
- (5) Where a notice or other document is sent by post to a person in accordance with subsection (1)(c) or (d), it shall be deemed, in the absence of proof to the contrary, to be received by the person at the time at which the letter would have been delivered in the ordinary course of the post.

Section 352(1)(b): amended, on 1 October 2009, by section 141(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 352(1)(ca): repealed, on 1 October 2009, by section 141(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 352(1)(d): substituted, on 1 October 2009, by section 141(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 352(1)(e): added, on 1 October 2009, by section 141(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 352(1)(f): added, on 1 October 2009, by section 141(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 352(1)(g): added, on 1 October 2009, by section 141(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 352(1)(h): added, on 1 October 2009, by section 141(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 352(4A): inserted, on 1 October 2009, by section 141(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 352(5): amended, on 1 October 2009, by section 141(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 352(5): amended, on 7 July 1993, by section 157(2) of the Resource Management Amendment Act 1993 (1993 No 65).

**352A Mode of service of summons on master or owner of ship**

- (1) If the master or owner of a ship is a defendant in a prosecution for an offence against section 338 for contravening sections 15A, 15B, or 15C, service on the defendant of a summons or other document is effected for the purposes of the Summary Proceedings Act 1957—
- (a) if it is delivered personally to the agent of the ship on behalf of the defendant or is brought to the notice of the agent if the agent refuses to accept it on behalf of the defendant; or
  - (b) if it is sent to the agent of the ship by registered letter addressed to that agent on behalf of the defendant at the agent's last known or usual place of residence or the agent's place of business.
- (1A) Subsection (1) applies despite any other enactment.
- (2) However, a District Court Judge or Justice or Community Magistrate or the Registrar may direct that the summons or other document shall be served on the defendant in accordance with section 24 of the Summary Proceedings Act 1957, where he or she is satisfied that it would not be impracticable to do so in the particular circumstances.
- (3) Unless the contrary is shown, the time at which service shall be deemed to have been effected on the defendant shall be,—
- (a) where service is effected in accordance with subsection (1)(a), the time when the summons or other document is personally delivered to the agent of the ship or brought to that agent's attention, as the case may be; or
  - (b) where service is effected in accordance with subsection (1)(b), the time when the letter would have been delivered to the agent of the ship in the ordinary course of post.
- (4) In this section,—

**District Court Judge** means a District Court Judge appointed under the District Courts Act 1947

**Justice** has the same meaning as in section 2 of the Justice of the Peace Act 1957

**Registrar** has the same meaning as in section 2(1) of the Summary Proceedings Act 1957.

Section 352A: inserted, on 20 August 1998, by section 25 of the Resource Management Amendment Act 1994 (1994 No 105).

Section 352A(1): substituted, on 10 August 2005, by section 122(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 352A(1A): inserted, on 10 August 2005, by section 122(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 352A(2): amended, on 10 August 2005, by section 122(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 352A(2): amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

Section 352A(4): substituted, on 10 August 2005, by section 122(3) of the Resource Management Amendment Act 2005 (2005 No 87).

### **353 Notices and consents in relation to Maori land**

Part 10 of Te Ture Whenua Maori Act 1993 shall apply to the service of notices under this Act on owners of Maori land, except that in no case shall the period fixed for anything to be done by the owners be extended by more than 20 working days under section 181(4) of that Act, unless otherwise provided by the local authority.

Section 353: substituted, on 7 July 1993, by section 158 of the Resource Management Amendment Act 1993 (1993 No 65).

### **354 Crown's existing rights to resources to continue**

- (1) Without limiting the Interpretation Act 1999 but subject to subsection (2), it is hereby declared that the repeal by this Act or the Crown Minerals Act 1991 of any enactment, including in particular—
  - (a) section 3 of the Geothermal Energy Act 1953; and
  - (b) section 21 of the Water and Soil Conservation Act 1967; and
  - (c) section 261 of the Coal Mines Act 1979,—shall not affect any right, interest, or title, to any land or water acquired, accrued, established by, or vested in, the Crown before the date on which this Act comes into force, and every such right, interest, and title shall continue after that date as if those enactments had not been repealed.
- (2) Any person may take, use, dam, divert, or discharge into, any water in which the Crown has an interest, without obtaining the consent of the Crown, if the taking, use, damming, diversion,

or discharge by that person does not contravene this Act or regulations.

- (3) Any person may use or occupy any part of the common marine and coastal area without obtaining consent, unless consent must be obtained under—
- (a) this Act; or
  - (b) any other enactment; or
  - (c) any instrument or order made under an enactment.

Section 354(1): amended, on 1 November 1999, pursuant to section 38(1) of the Interpretation Act 1999 (1999 No 85).

Section 354(2): substituted, on 7 July 1993, by section 159 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 354(3): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

### **355 Vesting of reclaimed land**

- (1) *[Repealed]*
- (2) Any person may apply to the Minister of Lands for any right, title, or interest in any land—
- (a) which forms part of a riverbed or lakebed which is land of the Crown; and
  - (b) which has been reclaimed or is proposed to be reclaimed—
- to be vested in that person.
- (3) The Minister of Lands may, if he or she thinks fit, by notice in the *Gazette*, vest in the applicant any right, title, or interest in any area of reclaimed land that forms part of a riverbed or lakebed that is not within the coastal marine area and which is land of the Crown after—
- (a) determining an appropriate price (if any) to be paid by the applicant in respect thereof; and
  - (b) ensuring that the consent authority has issued a certificate under section 245(5)(a)(ii) or (5)(b)(ii).
- (4) Every *Gazette* notice published under subsection (3)—
- (a) shall state the name of the person or local authority in whom or which the right, title, or interest is vested, and accurately describe the position and extent of the reclaimed land; and
  - (ab) must describe the right, title, or interest vested; and

- (b) shall refer to any encumbrances or restrictions imposed on the applicant's right, title, or interest in the land; and
  - (c) shall be sent by the relevant Minister to the Registrar-General of Land, with a request that a certificate of title be issued accordingly; and
  - (d) shall be registered, without fee, by the Registrar-General of Land as soon as practicable after receipt from the Minister.
- (5) The Registrar-General of Land shall, in accordance with a request made under subsection (4)(c), issue an appropriate certificate of title in respect of the right, title, or interest in the land vested by the *Gazette* notice.
- (6) For the purposes of this section, references to land that forms part of a riverbed or lakebed include land which was part of that bed before it was reclaimed.

Section 355(1): repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 355(3): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 355(3): amended, on 25 November 2004, by section 34(1) of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 355(4)(ab): inserted, on 25 November 2004, by section 34(2) of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Section 355(4)(c): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 355(4)(d): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 355(5): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 355(6): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

### **355AA Effect of Foreshore and Seabed Act 2004 on vesting of reclamations**

*[Repealed]*

Section 355AA: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**355AB Application for renewals***[Repealed]*

Section 355AB: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**355A Application for consent to unlawful reclamation**

- (1) Where land has at any time (whether before or after the date of commencement of this Act) been reclaimed from the coastal marine area unlawfully, any person may apply under section 88 to the relevant consent authority for, and the consent authority may grant to that person, a coastal permit consenting to that reclamation, as if the land were still situated within the coastal marine area.
- (2) The provisions of Part 6 apply in respect of any application made under subsection (1).

Section 355A: inserted, on 17 December 1997, by section 58 of the Resource Management Amendment Act 1997 (1997 No 104).

**355B Enforcement powers against unlawful reclamations**

- (1) Where, since the date of commencement of this Act, any land has been unlawfully reclaimed from the coastal marine area, the powers of the Minister of Conservation and a regional council under Part 12 apply to that reclaimed land as if the land were still situated within the coastal marine area.
- (2) Where any land has been unlawfully reclaimed from the coastal marine area before the commencement of this Act, the Minister of Conservation or a regional council may seek an enforcement order against the person who reclaimed the land, or the occupier of the reclaimed land, requiring that person to take such action as, in the opinion of the Environment Court, is necessary in order to avoid, remedy, or mitigate any actual or likely adverse effect on the environment caused by the carrying out of the reclamation or by the reclaimed land; and in any such case Part 12 applies with all necessary modifications.
- (3) Whether or not an enforcement order has been sought or granted under subsection (2), the Minister of Conservation or a regional council, either jointly or severally, may take any



necessary action to remove the unlawfully reclaimed land from the coastal marine area.

- (4) For the avoidance of doubt, any action taken under subsection (3) to remove any reclaimed land requires a resource consent unless expressly allowed by a rule in a regional coastal plan and any relevant proposed regional coastal plan.

Section 355B: inserted, on 17 December 1997, by section 58 of the Resource Management Amendment Act 1997 (1997 No 104).

**356 Matters may be determined by arbitration**

- (1) Except as provided in subsection (2), where—
- (a) any persons are unable to agree about any matter in respect of which any of those persons has a right of appeal under this Act; and
  - (b) every person who has such a right of appeal agrees—any of those persons may apply to the Environment Court for an order authorising the matter to be determined by arbitration, under the Arbitration Act 1908, on such terms and conditions as the court considers appropriate.
- (2) No person may apply to the Environment Court for an order under subsection (1) in relation to any of the following matters:
- (a) any matter relating to a requirement, designation, or heritage order;
  - (b) any matter relating to an application for a resource consent in respect of which the Minister has made a direction under section 141C;
  - (c) any matter relating to a proposed regional policy statement or proposed regional coastal plan.
- (3) Where an order under subsection (1) is made no person may, in relation to the matter to which the order relates, lodge or proceed with any appeal without the leave of the court.
- (4) Subject to the terms of any order made under subsection (1), the arbitrator has the same powers, duties, and discretions in respect of any decision to which the order relates as the consent authority who made that decision; and may, in his or her award, confirm, amend, or cancel any such decision accordingly.
- (5) Except as otherwise expressly provided, nothing in this section shall limit the right of any persons to refer to arbitration any disputed matter arising under this Act.

(6) *[Repealed]*

Section 356(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 356(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 356(2)(b): amended, on 10 August 2005, by section 123 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 356(3): amended, on 1 August 2003, by section 86(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 356(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 356(6): repealed, on 1 August 2003, by section 86(2) of the Resource Management Amendment Act 2003 (2003 No 23).

*Rights of objection*

Heading: inserted, on 10 August 2005, by section 124 of the Resource Management Amendment Act 2005 (2005 No 87).

**357 Right of objection against certain decisions**

- (1) A person whose application to a territorial authority is not granted under section 10(2) has a right of objection to the territorial authority.
- (2) A person whose submission to an authority is struck out under section 41C(7) has a right of objection to the authority.
- (3) A person whose application to a consent authority is determined to be incomplete under section 88(3) has a right of objection to the consent authority.
- (4) A person whose application or submission is declined to be processed or considered by a board of inquiry exercising the powers of a consent authority under section 99(8) has a right of objection to the board.
- (5) A person who requests a certificate of compliance from the EPA under section 139(13)(a) has a right of objection to the EPA about the EPA's decision on the request.
- (6) A requiring authority whose notice to a territorial authority is declined under section 182(5) has a right of objection to the territorial authority.
- (7) A requiring authority whose application to a territorial authority is not granted under section 184 has a right of objection to the territorial authority.

- (8) A requiring authority or heritage protection authority whose request to a territorial authority is not granted under section 198C(4) or (5) has a right of objection to the territorial authority.
- (9) A person has a right of objection to a regional council about a public notice given by the council under section 369(11).

Section 357: substituted, on 1 October 2009, by section 142 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**357A Right of objection to consent authority against certain decisions or requirements**

- (1) There is a right of objection to a consent authority,—
  - (a) in respect of a decision of that authority, for any person who has made an application under—
    - (i) section 124(2) (which relates to the exercise of a resource consent while applying for a new resource consent):
    - (ii) section 125(1)(b) (which relates to the lapsing of consents):
    - (iii) section 126(2)(b) (which relates to the cancellation of consents):
    - (iv) section 139 (which relates to certificates of compliance):
    - (v) section 139A (which relates to existing use certificates):
  - (b) *[Repealed]*
  - (c) *[Repealed]*
  - (d) in respect of an application or a submission that a consent authority declines to process or to consider, as provided for by section 99(8), for the person who made the application or submission:
  - (e) in respect of a decision of the authority under section 87E(5) or (6), for a person who made a request under section 87D:
  - (f) in respect of the consent authority's decision on an application or review described in subsections (2) to (5), for an applicant or consent holder, if—
    - (i) the application or review was notified; and

- (ii) either no submissions were received or any submissions received were withdrawn:
  - (g) in respect of the consent authority's decision on an application or review described in subsections (2) to (5), for an applicant or consent holder, if the application or review was not notified.
- (2) Subsection (1)(f) and (g) apply to an application made under section 88 for a resource consent. However, they do not apply if the consent authority refuses to grant the resource consent under sections 104B and 104C. They do apply if an officer of the consent authority exercising delegated authority under section 34A refuses to grant the resource consent under sections 104B and 104C.
- (3) Subsection (1)(f) and (g) apply to an application made under section 127 for a change or cancellation of a condition of a resource consent.
- (4) Subsection (1)(f) and (g) apply to a review of the conditions of a resource consent under sections 128 to 132.
- (5) Subsection (1)(f) and (g) apply to an application made under section 221 to vary or cancel a condition specified in a consent notice.

Section 357A: inserted, on 10 August 2005, by section 124 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 357A(1)(b): repealed, on 1 October 2009, by section 143(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357A(1)(c): repealed, on 1 October 2009, by section 143(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357A(1)(e): substituted, on 1 October 2009, by section 143(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357A(1)(f): added, on 1 October 2009, by section 143(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357A(1)(g): added, on 1 October 2009, by section 143(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357A(2): substituted, on 1 October 2009, by section 143(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357A(3): substituted, on 1 October 2009, by section 143(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357A(4): added, on 1 October 2009, by section 143(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357A(5): added, on 1 October 2009, by section 143(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**357B Right of objection in relation to imposition of additional charges or recovery of costs**

There is a right of objection,—

- (a) for a person required by a local authority to pay an additional charge under section 36(3) or costs under section 149ZD(1), to the local authority in respect of that requirement;
- (b) for a person required by the Minister to pay costs under section 149ZD(2) to (4), to the Minister in respect of that requirement.

Section 357B: inserted, on 10 August 2005, by section 124 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 357B(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357B(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**357C Procedure for making and hearing objection under sections 357 to 357B**

- (1) An objection under section 357, 357A, or 357B must be made by notice in writing not later than 15 working days after the decision or requirement is notified to the objector, or within any longer time allowed by the person or body to which the objection is made.
- (2) A notice of objection must set out the reasons for the objection.
- (3) In the case of an objection made under section 357 or section 357A, the person or body to which the objection is made must—
  - (a) consider the objection within 20 working days; and

- (b) give at least 5 working days' written notice to the objector of the date, time, and place for a hearing of the objection.
- (4) In the case of an objection made under section 357B, the person or body to which the objection is made must—
  - (a) consider the objection as soon as reasonably practicable; and
  - (b) give at least 5 working days' written notice to the objector of the date, time, and place for a hearing of the objection.

Section 357C: inserted, on 10 August 2005, by section 124 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 357C(1): substituted, on 1 October 2009, by section 144(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357C(3): amended, on 1 October 2009, by section 144(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357C(4): amended, on 1 October 2009, by section 144(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **357D Decision on objections made under sections 357 to 357B**

- (1) The person or body to which an objection is made under sections 357 to 357B may—
  - (a) dismiss the objection; or
  - (b) uphold the objection in whole or in part; or
  - (c) in the case of an objection under section 357B(a), as it relates to an additional charge under section 36(3), remit the whole or any part of the additional charge over which the objection was made.
- (2) The person or body to which the objection is made must, within 15 working days after making its decision on the objection, give to the objector, and to every person whom the person or body considers appropriate, notice in writing of its decision on the objection and the reasons for it.
- (3) In the case of an objection made under section 357A(1)(e), if the consent authority upholds the objection in whole or in part, that decision replaces the part of the earlier decision to which the objection relates.

Section 357D: inserted, on 10 August 2005, by section 124 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 357D(1): amended, on 1 October 2009, by section 145(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 357D(2): substituted, on 1 October 2009, by section 145(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**358 Appeals against certain decisions or objections**

- (1) Any person who has made an objection under section 357 or section 357A(1)(a), (d), (f), or (g) or section 357B may appeal to the Environment Court against the decision on the objection. Appeals from objections under section 357(4) or (8) or, for objections only to a board of inquiry, under section 357(2) are excluded.
- (2) Notice of an appeal under this section shall be in the prescribed form, stating the reasons for the appeal, and shall be lodged with the court within 15 working days after the decision on the objection being notified to that person under section 357D(2) or within such further time as the Environment Court may in any case allow.
- (3) Any person lodging an appeal under this section shall ensure that a copy of the notice of appeal is served on the consent authority or local authority at the same time as the notice is lodged with the Environment Court.
- (4) This section shall not apply to any person who has already exercised a right of appeal in respect of the same matter under section 120.

Section 358(1): substituted, on 7 July 1993, by section 162 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 358(1): amended, on 1 October 2009, by section 146(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 358(1): amended, on 1 October 2009, by section 146(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 358(1): amended, on 10 August 2005, by section 125(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 358(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 358(2): amended, on 10 August 2005, by section 125(2) of the Resource Management Amendment Act 2005 (2005 No 87).

Section 358(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 358(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **359 Regional councils to pay rents, royalties, and other money received into Crown Bank Account**

All rents, royalties, and other sums of money which the holders of resource consents are, by virtue of any authorisation granted under section 161 or any regulations made under section 360(1)(c), required to pay, shall be the property of the Crown and every regional council shall—

- (a) collect and receive from the holders of such resource consents in its region, all such rents, royalties, and other sums of money on behalf of the Crown; and
- (b) pay that money into a Crown Bank Account in accordance with the Public Finance Act 1989.

Section 359(b): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

### **360 Regulations**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) prescribing the manner or content of applications, notices, or any other documentation or information as may be required under this Act:
- (aa) prescribing the manner and content of forms for esplanade strips and access strips:
- (ab) *[Repealed]*
- (ac) prescribing the methods of making an application or requirement for a designation, the persons to be served, the times of service, and the form of application and notice required:
- (b) prescribing the fees payable or the methods for calculating fees and recovering costs in respect of consent applications, tenders, and operations, or other matters under this Act:



- (ba) prescribing those offences under this Act that constitute infringement offences against this Act:
- (bb) prescribing forms of infringement notices, and any other particulars to be contained in infringement notices, and prescribing the infringement fee (not exceeding \$1,000) for each infringement offence, which may be different fees for different offences:
- (bc) prescribing forms of reminder notices to be used in respect of infringement offences against this Act:
- (c) prescribing the amount, methods for calculating the amount, and circumstances and manner in which holders of resource consents are liable to pay for—
  - (i) the occupation of the coastal marine area, to the extent that it is within the common marine and coastal area; and
  - (ii) the occupation of the bed of any river or lake that is land of the Crown; and
  - (iii) the extraction of any sand, shingle, shell, and other natural materials from an area described in subparagraph (i) or (ii); and
  - (iv) the use of geothermal energy:
- (d) requiring the holders of water permits, discharge permits, coastal permits, or land use consents granted for any activity that would otherwise contravene section 13, to keep records for any purpose under this Act, and prescribing the nature of records, information, and returns, and the form, manner, and times in or at which they shall be kept or furnished:
- (e) providing for any project or work to be a network utility operation for the purpose of section 166:
- (f) prescribing the practice and procedure of the Environment Court and the form of proceedings, both under this Act and in relation to the exercise of any jurisdiction conferred on the court by any other Act:
- (g) prescribing transitional and savings provisions relating to the coming into force of this Act, which may be in addition to or in place of any of the provisions of Part 15; and, without limiting the generality of the foregoing, any such regulations may provide that, subject to such

conditions as are specified in the regulations, specified provisions of this Act shall not apply, or specified provisions of Acts repealed or amended by this Act, or of regulations, Orders in Council, notices, schemes, rights, licences, permits, approvals, authorisations, or consents made or given thereunder shall continue to apply, during a specified transitional period:

- (h) prescribing exemptions from any provision of section 15, either absolutely or subject to any prescribed conditions, and either generally or specifically or in relation to particular descriptions of contaminants or to the discharge of contaminants in particular circumstances or from particular sources, or in relation to any area of land, air, or water specified in the regulations:
- (ha) deeming to be included in any regional coastal plan or proposed regional coastal plan rules that may apply generally or specifically and that may do all or any of the following:
  - (i) specify as controlled activities, restricted discretionary activities, discretionary activities, non-complying activities, or prohibited activities, any activities to which section 15A applies:
  - (ii) specify criteria to be considered in considering any application under section 88 for a coastal permit to do something that otherwise would contravene section 15A or any application under section 127 to change or cancel any condition of such a coastal permit or on a review of conditions of such a coastal permit under section 128:
- (hb) prescribing any substance to be a harmful substance for the purposes of section 2(1):
- (hc) prescribing any waste or other matter to be toxic or hazardous waste for the purposes of section 15C:
- (hd) *[Repealed]*
- (he) without limiting paragraph (d), in relation to any coastal permit to do something that otherwise would contravene section 15A, requiring the holder of the coastal permit to keep records and furnish to the Director of Maritime New Zealand information and returns as to

- any matters in relation to any activity carried out under the coastal permit, and prescribing the nature of the records, information, and returns, and the form, manner, and times in or at which they shall be kept or furnished:
- (hf) prohibiting or permitting a discharge to which section 15B applies, or controlling a discharge to which that section applies, by prescribing conditions, limitations, or by other means, including describing the discharge by referring to the circumstances, quantities, components, or sources of the discharge:
  - (hg) prohibiting or permitting with or without conditions the making of a rule or the granting of a resource consent for a discharge to which section 15B applies, including describing the discharge by referring to the circumstances, quantities, components, or sources of the discharge:
  - (hh) prescribing any operations of a ship, aircraft, or offshore installation as a normal operation:
  - (hi) prescribing criteria for the exercise, in a particular hearing or class of hearing, of any of the powers specified in sections 41B and 41C:
  - (hj) providing for discounts on administrative charges imposed under section 36 when local authorities are responsible for applications for a resource consent and applications to change or cancel conditions under section 127 not being processed within the time limits in this Act:
  - (hk) requiring local authorities to provide information under sections 35 and 35A to the Minister within the time limits specified in the regulations:
  - (i) providing for any other such matters as are contemplated by, or necessary for giving full effect to, this Act and for its due administration.
- (2) Any regulations may apply generally or may apply or be applied from time to time by the Minister by notice in the *Gazette*, within any specified district or region of any local authority or within any specified part of New Zealand, or to any specified class or classes of persons.
- (2A) No regulation shall be made under any of paragraphs (ha) to (he) of subsection (1) except on the recommendation of the

Minister after consultation with the Minister of Transport and the Minister of Conservation.

- (2B) The Minister shall not recommend the making of any regulation under any of paragraphs (ha) to (hd) of subsection (1) unless, after having consulted with the Minister of Transport and the Minister of Conservation, the Minister is of the opinion that—
- (a) it is necessary or desirable to do so for all or any of the following purposes:
    - (i) to implement New Zealand's obligations under any international convention, protocol, or agreement, relating to the protection of the marine environment and to which New Zealand is a party;
    - (ii) to enable New Zealand to become a party to any international convention, protocol, or agreement, relating to the protection of the marine environment;
    - (iii) to implement such international practices or standards relating to the protection of the marine environment as may, from time to time, be recommended by the International Maritime Organization; or
  - (b) it is not inconsistent with any such purpose to do so.
- (2C) The Minister may, by notice in the *Gazette*, amend any schedule of any regulations made under section 360(1)(hb) or (hc) by omitting or inserting the names or a description of waste or other matter or harmful substance to make that schedule comply with the provisions of an international convention relating to the pollution of the marine environment.
- (2D) Regulations made under subsection (1)(hf) and (hg) may apply—
- (a) generally within New Zealand or to those areas of New Zealand specified in the regulations;
  - (b) generally to rules or resource consents, or to rules or resource consents made by the consent authorities specified in the regulations.
- (3) All regulations made under subsection (1)(g) that are still in force on the day that is 5 years after the date of commencement of this Act shall expire at the close of that day.

- (4) Regulations made under this section may incorporate material by reference. Schedule 1AA applies as if its references to a national environmental standard, national policy statement, or New Zealand coastal policy statement were references to regulations under section 360.

Section 360(1)(aa): inserted, on 7 July 1993, by section 163(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 360(1)(ab): repealed, on 1 October 2009, by section 147(1) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 360(1)(ac): inserted, on 1 August 2003, by section 88(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 360(1)(ba): inserted, on 2 September 1996, by section 19 of the Resource Management Amendment Act 1996 (1996 No 160).

Section 360(1)(bb): inserted, on 2 September 1996, by section 19 of the Resource Management Amendment Act 1996 (1996 No 160).

Section 360(1)(bc): inserted, on 9 October 2006, by section 36(2) of the Summary Proceedings Amendment Act 2006 (2006 No 13).

Section 360(1)(c): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Section 360(1)(f): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 360(1)(h): amended, on 7 July 1993, by section 163(3)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 360(1)(h): amended, on 7 July 1993, by section 163(3)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 360(1)(ha): inserted, on 1 February 1995, by section 26(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 360(1)(ha)(i): amended, on 1 August 2003, by section 88(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Section 360(1)(hb): inserted, on 1 February 1995, by section 26(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 360(1)(hc): inserted, on 1 February 1995, by section 26(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 360(1)(hd): repealed, on 17 December 1997, by section 60(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 360(1)(he): inserted, on 1 February 1995, by section 26(2) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 360(1)(he): amended, on 1 July 2005, by section 11(3) of the Maritime Transport Amendment Act 2004 (2004 No 98).

Section 360(1)(hf): inserted, on 17 December 1997, by section 60(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 360(1)(hg): inserted, on 17 December 1997, by section 60(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 360(1)(hh): inserted, on 17 December 1997, by section 60(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 360(1)(hi): inserted, on 10 August 2005, by section 127 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 360(1)(hj): inserted, on 1 October 2009, by section 147(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 360(1)(hk): inserted, on 1 October 2009, by section 147(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 360(2A): inserted, on 1 February 1995, by section 26(3) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 360(2B): inserted, on 1 February 1995, by section 26(3) of the Resource Management Amendment Act 1994 (1994 No 105).

Section 360(2C): inserted, on 17 December 1997, by section 60(3) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 360(2D): inserted, on 17 December 1997, by section 60(3) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 360(4): added, on 1 October 2009, by section 147(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **361 Repeals and revocations**

- (1) The enactments specified in Schedule 6 are hereby repealed.
- (2) The regulations and orders specified in Schedule 7 are hereby revoked.
- (3) Every Order in Council made under section 8A or section 165 of the Harbours Act 1950 is hereby revoked.
- (4) Every Proclamation made under section 132 of the Mining Act 1926 or under the corresponding provisions of any former enactment is hereby revoked.

### **362 Consequential amendments**

The enactments specified in Schedule 8 are hereby amended in the manner indicated in that schedule.

### **363 Conflicts with special Acts**

Every local authority or other public body shall be guided, in the exercise of any function, power, or duty in relation to natural or physical resources imposed or conferred by any of the enactments specified in Schedule 9, by the provisions of this

Act, and where any conflict arises between any such enactment and this Act, the provisions of this Act shall prevail.

## **Part 15**

### **Transitional provisions**

#### **364 Application of this Part**

This Part shall have effect notwithstanding the repeal of the enactments specified in Schedule 6, the revocation of the regulations and orders specified in Schedule 7, and the amendment of the enactments specified in Schedule 8.

#### **365 Meaning of permission**

In this Part, the term **permission** means any of the following:

- (a) a consent within the meaning of the Town and Country Planning Act 1977:
- (b) a licence under the Geothermal Energy Act 1953 or an authorisation under section 9(1) of that Act or powers or an authorisation under section 11 of that Act:
- (c) a licence within the meaning of the Clean Air Act 1972 or an approval under section 31 of that Act in respect of any scheduled premises within the meaning of that Act:
- (d) any of the following:
  - (i) a right in respect of water granted under section 21(3) of the Water and Soil Conservation Act 1967 (or deemed to be so granted by virtue of section 58(2) of the Water and Soil Conservation Amendment Act 1988):
  - (ii) any authorisation in respect of water under section 21(2) or section 21(2A) of that Act:
  - (iii) any right referred to in section 21(1) of that Act that was granted during the period commencing on 10 September 1966 and ending with 31 December 1968:
  - (iv) any right as expressly authorised by any other Act (other than the Tasman Pulp and Paper Company Enabling Act 1954), Order in Council, or Provincial Ordinance before the enactment of the

Water and Soil Conservation Act 1967 in respect of any specified water:

- (v) *[Repealed]*
- (vi) any damming of a river or stream, and diversion or taking of natural water, and any discharge of natural water into any other natural water, and any use of natural water referred to in section 31 of the Water and Soil Conservation Amendment Act 1973:
- (vii) any right to dam, divert, take, discharge into, or use water granted under section 3 of the Clutha Development (Clyde Dam) Empowering Act 1982:
- (viii) any right to take or use water granted under sections 4 or 5 of the Whakatane Paper Mills, Limited, Water Supply Empowering Act 1936 and transferred to the Whakatane Board Mills Limited by the Whakatane Board Mills Limited Water Supply Act 1961 that is in force and is exercisable by that company immediately before the date of commencement of this Act:
- (e) an approval by a territorial authority, under section 279 of the Local Government Act 1974, of a scheme plan of subdivision within the meaning of section 270 of that Act (or the approval of a plan of subdivision under the corresponding provisions of any former enactment).

Section 365(d)(v): repealed, on 7 July 1993, by section 164 of the Resource Management Amendment Act 1993 (1993 No 65).

### **366 Effect of this Act on existing schemes, consents, etc**

Except as otherwise provided in this Part or in any regulations, from the date of commencement of this Act each of the following shall cease to have any effect:

- (a) every proposed or operative regional planning scheme, maritime planning scheme, district scheme, and combined scheme under the Town and Country Planning Act 1977:
- (b) every instrument referred to in section 368(2) or section 370(2):



- (c) every permission referred to in any of sections 383 to 387 and 402:
- (d) every bylaw referred to in section 424(2), (3), (4), or (8):
- (e) every designation or requirement under the Town and Country Planning Act 1977 and every protection notice under section 36 of the Historic Places Act 1980:
- (f) every notice or direction under any of the following provisions:
  - (i) section 24D or section 24G of the Water and Soil Conservation Act 1967:
  - (ii) section 35 of the Soil Conservation and Rivers Control Amendment Act 1959:
- (g) every—
  - (i) current mining privilege within the meaning of section 2 of the Water and Soil Conservation Amendment Act 1971; and
  - (ii) right granted under the Water and Soil Conservation Act 1967 on an application made under section 18 of the Water and Soil Conservation Amendment Act 1971.

Section 366(d): amended, on 7 July 1993, by section 165 of the Resource Management Amendment Act 1993 (1993 No 65).

### **367 Effect of regional planning schemes**

- (1) Except as provided in subsection (2), every regional council and territorial authority, in carrying out any of its functions described in sections 30 and 31, shall have regard to the provisions of a regional planning scheme approved under section 24 of the Town and Country Planning Act 1977 in respect of the region or district immediately before the date of commencement of this Act, to the extent that those provisions are not inconsistent with Part 2.
- (2) Subsection (1) shall cease to apply to a regional council or territorial authority once there is, in respect of the relevant region or district,—
  - (a) a proposed regional policy statement; and
  - (b) in the case of a region which includes a coastal marine area, an operative regional coastal plan (other than a

regional coastal plan deemed to be constituted under section 370(1)) in respect of the coastal marine area.

*Transitional regional plans*

**368 Existing notices, bylaws, etc, to become regional plans**

- (1) Where 1 or more instruments of the kind referred to in subsection (2) are in force in respect of any part of a region except in the coastal marine area immediately before the date of commencement of this Act, a regional plan (not being a regional coastal plan) shall be deemed to be constituted for that region, which plan shall—
  - (a) include as provisions of the plan such of those instruments as applied to that part of the region except in the coastal marine area (whether or not those instruments have been repealed or revoked by this Act); and
  - (b) be deemed to be operative from the date of commencement of this Act until it ceases to be operative in accordance with this Part.
- (2) The instruments to which subsection (1) applies are as follows:
  - (a) local water conservation notices published in the *Gazette* under section 20H of the Water and Soil Conservation Act 1967;
  - (b) final water classifications notified under section 26F of the Water and Soil Conservation Act 1967 and classifications deemed to be classifications made under section 26E of that Act by section 25(2)(b) of the Water and Soil Conservation Amendment Act (No 2) 1971;
  - (c) maximum and minimum levels, minimum standards of quality, minimum acceptable flow, or maximum range of flow of any water, fixed under section 20J of the Water and Soil Conservation Act 1967;
  - (d) authorisations that have been notified under section 22 of the Water and Soil Conservation Act 1967;
  - (e) any bylaw made under—
    - (i) section 149 or section 150 of the Soil Conservation and Rivers Control Act 1941; or
    - (ii) section 34A of the Water and Soil Conservation Act 1967 or section 4 of the Water and Soil Conservation Amendment Act 1973; or

- (iii) section 50 of the Land Drainage Act 1908; or
- (iv) section 24(2) or section 55A of the Clean Air Act 1972—

to the extent that the subject matter of the bylaw could be the subject matter of a regional rule:

- (f) notices under section 34(2) of the Soil Conservation and Rivers Control Amendment Act 1959 which were notified on or after the day that is 2 years before the date of commencement of this Act:
- (g) the Clean Air Zone (Christchurch) Order 1977 (except for clause 5G) and the Clean Air Zones (Canterbury Region) Order 1984 (except for clause 5), and sections 2, 7, 8, 10, 15, 16(1), 16(2), 17, 19, and 20 of, and Schedules 1 and 2 of, the Clean Air Act 1972 and the Clean Air (Smoke) Regulations 1975, in so far as they apply in relation to the clean air zones declared by those orders.

**369 Provisions deemed to be regional rules**

- (1) A provision that is deemed by section 368(1) to be a provision of a regional plan and that, expressly or by implication and whether or not subject to conditions,—
  - (a) authorises anything without further consent or approval being required from any person under any enactment, regulation, or order referred to in Schedules 6, 7, or 8, is deemed to be a regional rule in respect of a permitted activity; or
  - (b) authorises anything if the consent or approval of any person is obtained from any person under any enactment, regulation, or order referred to in Schedules 6, 7, or 8, is deemed to be a regional rule in respect of a discretionary activity; or
  - (c) prohibits anything, or provides that it is an offence to do or omit to do anything, is deemed to be a regional rule having the effect of making an activity to which that act or omission relates a non-complying activity—and the provisions of this Act shall apply accordingly.
- (2) Notwithstanding subsection (1), a bylaw shall be deemed by subsection (1) to be a regional rule only if the regional council

for the region concerned has publicly notified the relevant plan in accordance with section 376.

- (3) Where provisions of a final water classification of the kind referred to in section 368(2)(b) are deemed to constitute provisions of a regional plan under section 368(1), the plan shall be deemed to include a regional rule requiring the minimum standards of water quality referred to in the classification to be maintained after reasonable mixing and a provision that the objective of that rule is to promote in the public interest the conservation and the best use of that water.
- (4) A consent authority may grant a discharge permit, or a coastal permit to do something that would otherwise contravene section 15, that does not meet the minimum standards of water quality as required by the regional rule under subsection (3) if it is satisfied—
  - (a) that exceptional circumstances justify the granting of the permit; or
  - (b) the discharge is of a temporary nature; or
  - (c) the discharge is associated with necessary maintenance work—and that it is consistent with the purpose of this Act to do so.
- (5) Without limiting section 113, where, in accordance with subsection (4), a consent authority grants a discharge permit that does not meet the minimum standards of water quality as required by a regional rule pursuant to subsection (3), the consent authority shall include in its decision its reasons for granting the permit.
- (6) In addition to any other conditions imposed under this Act, a permit granted pursuant to subsection (4)(a) or (b) shall include conditions requiring the holder of the permit to undertake such works in such stages throughout the term of the permit as will ensure that upon the expiry of the permit the holder can meet the requirements of section 107(1) and of any relevant regional rules.
- (7) Where provisions of an authorisation of the kind referred to in section 368(2)(d) are deemed to constitute provisions of a regional plan under section 368(1) and the authorisation authorises the damming of a river or stream, or rivers or streams within any specified area, the plan shall be deemed to include

a regional rule to the effect that such an activity is a permitted activity, but no person shall exercise the rights conferred by any such authorisation so as to adversely affect any land owned or occupied by another person, without that other person's written consent.

- (8) Where any provision of a bylaw of the kind referred to in section 368(2)(e)(i) or any provision of a notice of the kind referred to in section 368(2)(f) is deemed to constitute a provision of a regional plan under section 368(1) and the provision previously allowed any application for a permit or dispensation to be made without notice, that provision shall continue to apply:  
provided that, if the regional council considers special circumstances exist, it may, in its discretion, require any such application to be notified.
- (9) Where provisions of a notice of the kind referred to in section 368(2)(f) are deemed to constitute provisions of a regional plan under section 368(1), the provisions shall cease to be operative on the expiry of 2 years from the date on which the notice was notified under section 34(2) of the Soil Conservation and Rivers Control Amendment Act 1959.
- (10) Where the maximum and minimum levels, minimum standards of quality, minimum acceptable flow, or maximum range of flow of any water fixed under section 20J of the Water and Soil Conservation Act 1967 are deemed to constitute the provisions of a regional plan under section 368(1), the plan shall be deemed to include—
- (a) a rule to the effect that no permit shall be granted in contravention of such provisions; and
  - (b) a rule to the effect that the exercise of existing consents shall be affected in accordance with section 68(7).
- (11) Where an order of the kind referred to in section 368(2)(g) is deemed to constitute provisions of a regional plan under section 368(1), the plan shall be deemed to include a rule to the effect that the regional council may, by public notice,—
- (a) authorise or prohibit the use, in a clean air zone, of any class of fuel specified in the notice; and

- (b) authorise or prohibit the installation or use, in a clean air zone, of any class of fuel-burning equipment specified in the notice.
- (12) A regional plan deemed to be constituted under section 368 may, at any time, in accordance with Schedule 1, be changed so as to exclude or modify the application of any of subsections (3) to (11) to the plan.
- (13) Sections 357 to 358 (which deal with rights of objection and appeal against certain decisions) apply, with all necessary modifications, in respect of every public notice under subsection (11).

Section 369(4): substituted, on 7 July 1993, by section 166 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 369(4): amended, on 17 December 1997, by section 61 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 369(5): substituted, on 7 July 1993, by section 166 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 369(6): substituted, on 7 July 1993, by section 166 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 369(7): substituted, on 7 July 1993, by section 166 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 369(8): added, on 7 July 1993, by section 166 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 369(9): added, on 7 July 1993, by section 166 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 369(10): added, on 7 July 1993, by section 166 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 369(11): added, on 7 July 1993, by section 166 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 369(12): added, on 7 July 1993, by section 166 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 369(13): added, on 1 August 2003, by section 89 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 369(13): amended, on 10 August 2005, by section 126 of the Resource Management Amendment Act 2005 (2005 No 87).

### *Transitional regional coastal plans*

#### **370 Existing notices, bylaws, etc, to become regional coastal plans**

- (1) Where 1 or more instruments of the kind referred to in subsection (2) are in force in respect of any part of a region within the

- coastal marine area immediately before the date of commencement of this Act, a regional coastal plan shall be deemed to be constituted for that region, which plan shall—
- (a) include as provisions of the plan such of those instruments as applied to that part of the region within the coastal marine area (whether or not those instruments have been repealed or revoked by this Act); and
  - (b) be deemed to be operative from the date of commencement of this Act; and
  - (c) cease to be operative on the date upon which a regional coastal plan prepared in the manner set out in Schedule 1 becomes operative for that region.
- (2) The instruments to which subsection (1) applies are as follows:
- (a) operative district schemes, combined schemes, and maritime planning schemes under the Town and Country Planning Act 1977;
  - (b) determinations of the Minister of Fisheries under section 4(2) of the Marine Farming Act 1971 and notified in the *Gazette* under section 4(4) of that Act that any areas shall not be available for leasing or licensing under that Act;
  - (c) instruments of the kinds referred to in section 368(2);
  - (d) declarations notified in the *Gazette* by the Minister of Fisheries under section 14E of the Marine Farming Act 1971 that an area is a spat-catching area.
- (3) Where, in respect of the whole or any part of the coastal marine area of a region, any provision of a proposed district scheme, maritime planning scheme, or combined scheme, or any proposed change or variation or review, under the Town and Country Planning Act 1977 has been publicly notified before the date of commencement of this Act, that provision shall be deemed to constitute a provision of a proposed regional coastal plan for that region.
- (4) Notwithstanding section 64(4), a request under clause 21 of Schedule 1 to a regional council to change a regional coastal plan deemed to be constituted under subsection (1) may only be made by one of the following persons:
- (a) the Minister of Conservation:

- (b) the territorial authority for any district that is within or adjoins the relevant region.

Section 370(2)(d): added, on 7 July 1993, by section 167(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 370(3): amended, on 7 July 1993, by section 167(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 370(4): substituted, on 7 July 1993, by section 167(3) of the Resource Management Amendment Act 1993 (1993 No 65).

### **371 Provisions deemed to be regional rules**

- (1) A provision of a district scheme or a combined scheme under the Town and Country Planning Act 1977 that is deemed by section 370 to be a provision of a regional coastal plan shall also be deemed to be—
  - (a) a regional rule in respect of a controlled activity where, under the district scheme or combined scheme, the provision provided for specified controls and powers in respect of any controlled use within the meaning of the Town and Country Planning Act 1977:
  - (b) a regional rule in respect of a discretionary activity where the provision of the district scheme or combined scheme required an application for approval as a conditional use within the meaning of the Town and Country Planning Act 1977:
  - (c) a regional rule in respect of a discretionary activity where the provision of the district scheme or combined scheme required an application for dispensation from any provisions of the scheme in accordance with section 76 of the Town and Country Planning Act 1977—  
and the provisions of this Act shall apply accordingly.
- (2) Any determination by the Minister of Fisheries described in section 370(2)(b) shall be deemed to be a regional rule having the effect of making marine farming within the meaning of the Marine Farming Act 1971 a prohibited activity in any areas specified in that determination.
- (2A) Any declaration by the Minister of Fisheries described in section 370(2)(d) shall be deemed to be a regional rule having the effect of making spat catching—



- (a) a controlled activity, when the person carrying on the activity requires exclusive occupation of the area specified in the determination; or
  - (b) a permitted activity, in every other case.
- (3) Except as provided in subsections (1) and (2), sections 368 and 369 shall apply in respect of regional coastal plans as if every reference in those sections to—
  - (a) a regional plan, were a reference to a regional coastal plan; and
  - (b) section 368(1), were a reference to section 370(1); and
  - (c) subject to section 370(4), section 65, were a reference to section 64; and
  - (d) a discharge permit, were a reference to a coastal permit to do something that would otherwise contravene section 15.
- (4) Where any former district scheme or combined scheme provided, in accordance with section 36(7) of the Town and Country Planning Act 1977, that any application or class of application could be made without notice, that provision shall continue to apply.
- (5) Subsections (1) to (4) shall apply, with all necessary modifications, in respect of a provision of any proposed district scheme or combined scheme or maritime planning scheme, or any change, review, or variation, under the Town and Country Planning Act 1977 that has been publicly notified before the date of commencement of this Act and to any variation, publicly notified under section 378(1).

Section 371 heading: amended, on 7 July 1993, by section 168 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 371(1)(c): substituted, on 7 July 1993, by section 168(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 371(2A): inserted, on 7 July 1993, by section 168(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 371(3)(c): substituted, on 7 July 1993, by section 168(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 371(3)(d): added, on 7 July 1993, by section 168(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 371(5): added, on 7 July 1993, by section 168(4) of the Resource Management Amendment Act 1993 (1993 No 65).

**372 Power of Minister of Conservation to give directions relating to restricted coastal activities**

- (1) Subject to subsection (3), the Minister of Conservation may, from time to time, having regard to the matters set out in paragraphs (a) and (b) of section 68(4) and such other matters as the Minister considers appropriate, direct a regional council, in accordance with subsection (2), to—
  - (a) treat any specified activity in the coastal marine area as a restricted coastal activity for the purposes of this Act, whether or not any regional coastal plan is deemed to be operative in that region under section 370;
  - (b) make any specified change to a regional coastal plan deemed to be operative under section 370 for the purpose of identifying in the plan what activities are restricted coastal activities;
  - (c) deal with any specified application for permission or for a coastal permit in respect of any activity in the coastal marine area as an application for a restricted coastal activity,—and the regional council shall forthwith comply with that direction accordingly.
- (2) A direction under subsection (1) shall be in writing, and shall be served on the relevant regional council.
- (3) A direction under subsection (1)—
  - (a) shall not affect any application for a permission or a coastal permit in respect of which the regional council has notified its decision; and
  - (b) shall not affect any other application for a permission or a coastal permit in respect of which the regional council has, before the date upon which the direction is served, fixed a commencement date for a hearing, which date is less than 6 working days after the date upon which the direction is served; and
  - (c) shall cease to have effect upon the date that a proposed regional coastal plan is made operative under clause 20 of Schedule 1.
- (4) Upon receipt of a direction under subsection (1), the regional council so directed shall, as soon as reasonably practicable,—

- (a) without using the process in Schedule 1, make any change to a regional coastal plan specified in the direction for the purpose of identifying in the plan what activities are restricted coastal activities, and from the date of the change the activities concerned shall be deemed to be restricted coastal activities; and
  - (b) where the direction specifies that an application for a permission or for a coastal permit in respect of any activity in the coastal marine area shall be dealt with as an application for a restricted coastal activity, serve a copy of the direction on every applicant for that permission or coastal permit and every person who has made a submission in respect of that application; and
  - (c) give public notice of the direction, including a description of—
    - (i) any change to be made to any regional coastal plan; and
    - (ii) any application for permission or for a coastal permit specified in the direction.
- (5) Other provisions of this Act relating to the changing of a regional coastal plan do not apply to a change made in accordance with a direction given under subsection (1).
- (6) Subject to subsection (3), a direction given under this section shall take effect on the date that it is served, regardless of when the regional council makes any change to any regional coastal plan specified in the direction.
- (7) Until such time as a proposed regional coastal plan is notified in respect of a region, the Minister of Conservation may, from time to time, direct the relevant regional council as to—
  - (a) matters which the regional council shall have regard to in considering any application or class of applications for a coastal permit; and
  - (b) the conditions that should or should not be included in any coastal permit or class of coastal permits; and
  - (c) such other matters as the Minister thinks fit.
- (8) Subsections (2) and (3) shall apply to any directions given under subsection (7), except that those directions shall cease to have effect on the date that a proposed regional coastal plan is notified under clause 5 of Schedule 1.

Section 372(3)(c): amended, on 1 August 2003, by section 90 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 372(4)(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

*Transitional district plans*

**373 Existing district and maritime schemes to become district plans**

- (1) Where any operative district scheme or combined scheme or maritime planning scheme under the Town and Country Planning Act 1977 is in force in respect of the whole or any part of a district immediately before the date of commencement of this Act, a district plan shall be deemed to be constituted for that district, which plan shall—
  - (a) include as provisions of the plan such of the provisions of those schemes as apply to the district; and
  - (b) be deemed to be operative from the date of commencement of this Act until it ceases to be operative in accordance with this Act.
- (2) Where any proposed district scheme, combined scheme, or maritime planning scheme, or any change, review, or variation under the Town and Country Planning Act 1977 in respect of the whole or part of a district has been publicly notified before the date of commencement of this Act, a proposed plan shall be deemed to be constituted for that district, except for the purposes of section 378.
- (3) *[Repealed]*
- (4) Where, immediately before the date of commencement of this Act,—
  - (a) no operative district scheme, combined scheme, or maritime planning scheme under the Town and Country Planning Act 1977 is in force; and
  - (b) no proposed district scheme, combined scheme, or maritime planning scheme, or proposed change or variation, under that Act has been publicly notified—in respect of any district, then, for the purposes of this Act every use of land shall be deemed to be a discretionary activity.

Section 373(2): substituted, on 7 July 1993, by section 169(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 373(3): repealed, on 7 July 1993, by section 169(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 373(4): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 373(4): amended, on 7 July 1993, by section 169(3) of the Resource Management Amendment Act 1993 (1993 No 65).

**374 Provisions deemed to be district rules**

- (1) A provision of a district scheme or combined scheme that is deemed by section 373 to be a provision of a district plan shall be deemed to be—
  - (a) a district rule in respect of a controlled activity where, under the district scheme or combined scheme, the provision provided for specified controls and powers in respect of any controlled use within the meaning of the Town and Country Planning Act 1977; or
  - (b) a district rule in respect of a discretionary activity where the provision of the district scheme or combined scheme required an application for approval as a conditional use within the meaning of the Town and Country Planning Act 1977; or
  - (c) a district rule in respect of a discretionary activity where the provision of the district scheme or combined scheme required an application for dispensation from any provisions of the scheme in accordance with section 76 of the Town and Country Planning Act 1977—and the provisions of this Act shall apply accordingly.
- (2) Where a former district scheme or combined scheme provided, in accordance with section 36(7) of the Town and Country Planning Act 1977, that any application or class of application could be made without notice, that provision shall continue to apply.
- (3) Except as otherwise provided in subsection (1), a provision that is deemed by section 373 to be a provision of a district plan and that, expressly or by implication and whether or not subject to conditions,—

- (a) authorised anything without further consent or approval from the former consent authority being required, is deemed to be a district rule in respect of a permitted activity; or
  - (b) authorised anything if the consent or approval of the former consent authority was obtained, is deemed to be a district rule in respect of a discretionary activity; or
  - (c) prohibited anything, or provided that it was an offence to do or not to do anything, is deemed to be a district rule having the effect of making an activity to which the act or omission relates a non-complying activity,—and the provisions of this Act shall apply accordingly.
- (4) Where a plan or proposed plan or change is deemed to be constituted under section 373, the plan shall be deemed to include a rule to the effect that every activity which—
  - (a) is not specifically referred to in the plan; and
  - (b) immediately before the commencement of this Act, was subject to—
    - (i) controls, restrictions, or prohibitions and required the consent or approval of any person or body under any enactment or regulation referred to in Schedules 6 or 7 or 8; or
    - (ii) any order, bylaw, or scheme or any other exercise of delegated authority (however described) and made or exercisable under any such enactment or regulation—which, because of the coming into force of this Act, can no longer be exercised or enforced—is a non-complying activity.
- (5) Subsections (1) to (4) shall apply, with all necessary modifications, in respect of a provision of any proposed district scheme or combined scheme or maritime planning scheme, or any change, review, or variation, under the Town and Country Planning Act 1977 that has been publicly notified before the date of commencement of this Act, and to any variation, publicly notified under section 378(1).

Section 374(1)(c): substituted, on 7 July 1993, by section 170(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 374(4): substituted, on 7 July 1993, by section 170(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 374(5): added, on 7 July 1993, by section 170(2) of the Resource Management Amendment Act 1993 (1993 No 65).

**375 Transitional provisions for public utilities**

- (1) Subject to subsection (2), every district plan or any proposed district plan constituted under section 373 shall be deemed to include—
- (a) a rule that each of the following is a permitted activity throughout the district:
    - (i) transformers and lines for conveying electricity at a voltage up to and including 110 KV with a capacity up to and including 100 MVA:
    - (ii) household, commercial, and industrial connections to gas, water, drainage, and sewer pipes:
    - (iii) water and irrigation races, drains, channels, and pipes and necessary incidental equipment:
    - (iv) lines as defined by section 5 of the Telecommunications Act 2001:
    - (v) pipes for the distribution (but not transmission) of natural or manufactured gas at a gauge pressure not exceeding 2 000 kilopascals and necessary incidental equipment, including household connections and compressor stations:
    - (vi) pipes for the conveyance or drainage of water or sewage, and necessary incidental equipment including household connections:
    - (vii) lighthouses, navigational aids, and beacons;
  - (b) a rule that each of the following is a discretionary activity throughout the district and shall be allowed upon the condition that the territorial authority is satisfied that the proposed location is suitable, namely:
    - (i) transformers and lines for conveying electricity at a voltage exceeding 110 KV and a capacity exceeding 100 MVA:
    - (ii) pipes for the transmission of natural or manufactured gas at a gauge pressure exceeding 2 000 kilopascals and necessary incidental equipment, including compressor stations.

- (2) The application of this section may be excluded or modified at any time in accordance with Schedule 1.
- (3) This section shall cease to have effect in a district on the date that the proposed district plan for the district becomes operative, not being a proposed district plan constituted under section 373.

Section 375(1): amended, on 7 July 1993, by section 171(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 375(1)(a)(iv): substituted, on 10 August 2005, by section 128 of the Resource Management Amendment Act 2005 (2005 No 87).

Section 375(2): substituted, on 7 July 1993, by section 171(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 375(3): substituted, on 7 July 1993, by section 171(2) of the Resource Management Amendment Act 1993 (1993 No 65).

#### *Provisions relating to all plans*

### **376 Transitional plans to be notified and available**

The regional council or territorial authority of a region or district for which there is deemed to be a plan by virtue of any of sections 368, 370, and 373 or by virtue of the operation of section 378 shall—

- (a) as soon as reasonably practicable, publicly notify the fact that as from the date of commencement of this Act the plan became operative and a description of the instruments or schemes whose provisions are included as provisions of that plan, and send a copy of the notice to every person and authority referred to in clause 5 of Schedule 1; and
- (b) keep in accordance with section 35 copies of the plan at its principal office and in a form readily accessible to the public.

### **377 Obligation to review transitional plans**

- (1) A local authority shall review a plan constituted under this Part and, subject to subsection (2), section 79 shall apply to such review.
- (2) Where the plan includes any provisions of—
  - (a) a district scheme or combined scheme or a maritime planning scheme, section 79 shall apply to a review of



that plan under subsection (1) as if the reference in section 79(1) and (2) to the tenth year after the plan became operative were a reference to the date upon which that scheme would have been due for review under section 59 or section 109(3) of the Town and Country Planning Act 1977 if this Act had not been enacted:

- (b) 2 or more district schemes or combined schemes or maritime planning schemes, section 79 shall apply to a review of that plan under subsection (1) as if the reference in section 79(1) and (2) to the tenth year after the plan became operative were a reference to the latest date upon which any of those schemes would have been due for review under section 59 or section 109(3) of the Town and Country Planning Act 1977.
- (3) Where the plan includes any provisions of a district scheme, combined scheme, maritime planning scheme, or instrument that is deemed to have been completed and made operative under section 378, section 79 shall apply to a review of that plan under subsection (1) as if the reference in section 79(1) and (2) to the tenth year after the plan became operative were a reference to the fifth year after the provisions of the plan made operative under section 378 became operative.
- (4) Subsections (1) and (2) are subject to subsection (3).

**378 Proceedings in relation to plans**

- (1) Subject to subsection (3), all proposed district schemes, combined schemes, and maritime planning schemes, and all changes and reviews, under the Town and Country Planning Act 1977 that were publicly notified but not operative before the date of commencement of this Act, and all variations (whether publicly notified before or after the commencement of this Act) to such proposed schemes, changes, or reviews may be continued and completed in all respects as if the Town and Country Planning Act 1977 continued in force, and, when completed, shall have effect under this Part as if they had been completed and made operative before the date of commencement of this Act.

- (1A) Notwithstanding subsection (1), any local authority shall take into account the provisions of this Act in relation to any variation publicly notified on or after 28 May 1992.
- (1B) All variations to which subsection (1) applies, whether or not completed before the commencement of this subsection, are hereby validated and declared to have been lawfully commenced, notwithstanding that they may have been held invalid in any judicial proceedings before the commencement of this subsection.
- (1C) For the purposes of section 294 (which provides for a review of its decision by an Environment Court), the validation of the variations under subsection (1B) is deemed to be a change of circumstances.
- (2) All proceedings relating to the preparation, amendment, review, or revocation of any instrument referred to in section 368(2) that were commenced before the date of commencement of this Act and have not been completed at that date shall be continued and completed in all respects—
  - (a) in cases where they have been wholly or partly heard, as if the enactments repealed by this Act continued in force; and
  - (b) in all other cases, as if they had been commenced under this Act which shall apply accordingly,—and all such proceedings, when completed, shall have effect under this Part after they have been completed as if they had been completed before the date of commencement of this Act.
- (3) Subject to section 427(7), where any proposed district scheme, maritime planning scheme, or combined scheme under the Town and Country Planning Act 1977, or change to or variation or review of any such scheme under that Act, relates solely or in part to the whole or any part of the coastal marine area of a region, all functions, powers, and duties under subsection (1) in relation to such proposed scheme, change, variation, or review, or part thereof, as the case may be, shall, on the date of commencement of this Act, transfer to the relevant regional council.
- (4) Any person, who if this Act had not been enacted, had—
  - (a) a right of appeal to the High Court on a question of law; or

(b) a right to make any application for review—  
in respect of any proceedings to which subsection (1) or (2)  
applies shall continue to have that right, and that right may be  
exercised as if the enactments repealed by this Act continued  
in force.

Section 378(1): substituted, on 7 July 1993, by section 172 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 378(1A): inserted, on 7 July 1993, by section 172 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 378(1B): inserted, on 7 July 1993, by section 172 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 378(1C): inserted, on 7 July 1993, by section 172 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 378(1C): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **379 Declarations**

Section 310 shall have effect as if the following paragraph were added:

“(g) whether provisions of any instrument of a kind referred to in section 368(2) are deemed to constitute provisions of a plan under any of sections 368 and 370, and whether any such provision or any provision of a plan under section 373 is deemed by this Part to be a rule in respect of a permitted activity, a controlled activity, a discretionary activity, or a non-complying activity.”

Section 379: amended, on 7 July 1993, by section 173 of the Resource Management Amendment Act 1993 (1993 No 65).

### *Transitional notices, directions, etc*

### **380 Existing notices which continue in effect**

Every notice given under any of the following enactments and that is in force immediately before the date of commencement of this Act shall continue to have effect, and the enactment under which it was given shall continue to apply, as if this Act had not been enacted:

(a) section 6 of the Noise Control Act 1982 (which relates to noise abatement notices):

- (b) section 77 of the Town and Country Planning Act 1977 (which imposes a duty to keep objectionable elements to a minimum):
- (c) section 94 of the Town and Country Planning Act 1977 (which relates to enforcement of district schemes):
- (d) section 177 of the Harbours Act 1950 (which relates to the removal of unauthorised works):
- (e) section 29A of the Clean Air Act 1972 (which relates to the shutting down of processes) and section 42 of that Act (which relates to the furnishing of information).

**381 Existing notices deemed to be abatement notices**

- (1) Subject to subsection (2), every notice given under any of the following enactments that is in force (whether or not subject to any appeal) immediately before the date on which this Act commences shall be deemed to be an abatement notice served on a person under section 322 and the provisions of this Act (other than those giving rights of appeal) shall apply accordingly:
  - (a) sections 24D and 24G of the Water and Soil Conservation Act 1967 (which authorises restrictions on and cessation of the exercise of rights relating to water):
  - (b) section 35 of the Soil Conservation and Rivers Control Amendment Act 1959 (which authorises requirements relating to soil conservation).
- (2) Any right of appeal against a notice of a kind referred to in subsection (1) that exists at the date of commencement of this Act shall continue after that date as if the enactment giving that right continued in force.

**382 Existing direction deemed to be excessive noise direction**

Every direction given under section 9(3) of the Noise Control Act 1982 and that is in force immediately before the date of commencement of this Act shall be deemed to be an excessive noise direction given under section 327 on the same conditions; and the provisions of this Act shall apply accordingly.

**382A Return of property seized under Noise Control Act 1982**

Any property seized and impounded under the provisions of section 7 or section 11 of the Noise Control Act 1982 which has not been returned to the owner, or person from whom it was seized, at the date of commencement of this Act shall be deemed to be property seized under section 328; and the provisions of this Act shall apply accordingly.

Section 382A: inserted, on 7 July 1993, by section 174 of the Resource Management Amendment Act 1993 (1993 No 65).

*Transitional resource consents*

**383 Existing permissions to become land use consents**

Every permission—

- (a) granted under any of Parts 2, 4, and 5 of the Town and Country Planning Act 1977 (or the corresponding provisions of any former enactment) in respect of any area in a district; and
- (b) in force immediately before the date of commencement of this Act—

shall be deemed to be a land use consent granted under this Act on the same conditions (including those set out in any enactment whether or not repealed or revoked by this Act, except to the extent that they are inconsistent with the provisions of this Act) by the appropriate territorial authority; and the provisions of this Act shall apply accordingly.

**383A Existing permissions to allow use of beds of lakes and rivers**

- (1) Every Order in Council made under section 175 of the Harbours Act 1950 and every approval granted under section 178(1)(b) or (2) of that Act (or the corresponding provisions of any former enactment) in respect of any area in a region which is river bed or lake bed, and that is in force immediately before the date of commencement of this Act, shall be deemed to be a resource consent required under section 13, and to have been granted under this Act on the same conditions (including those set out in any enactment, whether or not repealed or revoked by this Act, except to the extent that they are inconsistent with the provisions of this Act) by the

appropriate regional council; and the provisions of this Act shall apply accordingly.

- (2) Notwithstanding section 13 but subject to section 418(3), (3A), (3B), and (3C), a person who is the holder of a resource consent referred to in subsection (1) shall not thereby be authorised to carry out any activity referred to in section 13 except where that person also holds every other permission, licence, permit, or approval that, immediately before the date of commencement of this Act, he or she was legally required to hold in order to carry out the activity.
- (3) Notwithstanding subsection (2), every resource consent deemed to be granted by subsection (1) shall be deemed to include a condition enabling the holder of the consent, at any time within 3 years after the date of commencement of this Act, to apply to the relevant regional council under section 127(1) to change the permit for the purpose of including, as conditions of that permit, matters that could have been included in a licence, permit, or approval required before 1 October 1991 and of enabling the consent to authorise the activity.

Section 383A: inserted, on 7 July 1993, by section 175 of the Resource Management Amendment Act 1993 (1993 No 65).

### **384 Existing permissions to become coastal permits**

(1) Every—

- (a) permission granted under any of Parts 2, 4, and 5 of the Town and Country Planning Act 1977 (or the corresponding provisions of any former enactment); and
- (b) licence or permit granted under section 146A or section 156 or section 162 or section 165 of the Harbours Act 1950, Order in Council made under section 175 of that Act, and every approval granted under section 178(1)(b) or (2) of that Act (or the corresponding provisions of any former enactment); and
- (c) licence, permit, or authority granted under any Act that was, at the time of its enactment, a special Act within the meaning of the Harbours Act 1950 or any other enactment that provides for any right of occupation—

in respect of any area in the coastal marine area, being a permission, licence, permit, or authority in force immediately before the date of commencement of this Act, shall be deemed to be a coastal permit granted under this Act on the same conditions (including those set out in any enactment, whether or not repealed or revoked by this Act, except to the extent that they are inconsistent with the provisions of this Act) by the appropriate consent authority; and the provisions of this Act shall apply accordingly.

- (2) Notwithstanding section 12, a person who is the holder of—
- (a) a permission referred to in subsection (1)(a); or
  - (b) a licence, permit, or approval referred to in subsection (1)(b); or
  - (c) a licence, permit, or authority referred to in subsection (1)(c); or
  - (d) a coastal permit granted by virtue of the operation of any of the provisions of sections 390, 390A, 390C, and 393—

shall not thereby be authorised to carry out any activity referred to in section 12, except where that person also holds every other permission, licence, permit, or approval referred to in subsection (1)(a) or subsection (1)(b) that, immediately before the date of commencement of this Act, he or she was legally required to hold in order to carry out the activity.

- (3) Notwithstanding subsection (2), every coastal permit deemed to be granted by subsection (1) shall be deemed to include a condition enabling the holder of the permit, at any time until the proposed regional coastal plan is notified, to apply to the relevant regional council under section 127(1) to change the permit for the purpose of including, as conditions of that permit, matters that could have been included in a permission referred to in subsection (1)(a) or a licence, permit, or approval referred to in subsection (1)(b) or a licence, permit, or authority referred to in subsection (1)(c), and of enabling the permit to authorise the activity.
- (4) Notwithstanding section 127, any application under that section to change a permit pursuant to subsection (3) shall be notified only to the Minister of Conservation and any other

resource consent holder who may be affected by the activity which is the subject of the application.

- (5) This section applies subject to section 12 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

Section 384: substituted, on 7 July 1993, by section 176 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 384(5): added, on 1 January 2005, by section 21 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### **384A Right of port companies to occupy coastal marine area**

- (1) Every port company which considers that—
- (a) it had, on 30 September 1991, a right to occupy the coastal marine area adjacent to any port related commercial undertaking; and
  - (b) such occupation is required for any purpose associated with the operation and management of that undertaking—
- may, in consultation with the appropriate regional council, prepare a draft coastal permit to authorise that occupation.
- (2) Every such draft coastal permit shall state that it is to expire on the 30 September 2026 or such earlier date as the port company specifies.
- (3) Every such draft coastal permit shall identify the location to which it relates; and may identify the location by a plan attached to the draft permit.
- (4) The draft permit and any plan shall be forwarded to the Minister of Transport, along with written notice of any disagreements between the port company and regional council, and submissions by the port company and regional council on the disagreements, before 30 November 1993.
- (5) The Minister of Transport shall consider—
- (a) the draft permit; and
  - (b) any disagreements; and
  - (c) the port company plan approved or determined under section 22 of the Port Companies Act 1988; and
  - (d) any other matter the Minister considers appropriate—
- to determine the extent to which a coastal permit authorising occupation is required to enable the port company to manage



and operate the port related commercial undertakings acquired under the Port Companies Act 1988.

- (6) Before making any determination under subsection (5), the Minister of Transport shall consult with the Minister of Conservation, the appropriate regional council, any territorial authority having jurisdiction in the area adjacent to the coastal marine area concerned, and the port company.
- (7) The Minister of Transport shall approve the draft coastal permit and any plan, with or without modification, but the proposed expiry date shall not be altered.
- (8) The Minister of Transport's decision, which shall be a coastal permit, shall be sent to the Minister of Conservation, the appropriate regional council, territorial authority, and port company before 31 March 1994; and that decision shall be final unless an application for review under Part 1 of the Judicature Amendment Act 1972, or proceedings seeking a writ of, or in the nature of, mandamus, prohibition, or certiorari, or a declaration or injunction in relation to that decision, is made.
- (9) The appropriate regional council shall ensure that a record of the coastal permit, as decided by the Minister of Transport, is available to the public as required under section 35.
- (10) Where—
  - (a) a regional council receives an application from any person, except a port company; and
  - (b) that application is for a coastal permit to occupy part of the coastal marine area which may be all or part of any area which a port company may have a right to occupy; and
  - (c) the written consent of the port company to the granting of the permit has not been obtained; and
  - (d) the Minister of Transport has not sent the regional council a decision on a coastal permit under subsection (8) relating to all or part of the area to which the application relates—

the consent authority shall, notwithstanding any other provision, adjourn any consideration or hearing of the application until the Minister of Transport has sent his or her decision:

provided that, where the application is made by a person who owns or has an interest in land immediately adjacent to the

coastal marine area sought to be occupied, the application shall not be adjourned but shall in all cases be publicly notified.

- (11) For the purposes of this section—  
**port company** and **port related commercial undertaking** have the same meanings as in section 2(1) of the Port Companies Act 1988
- (12) For the purposes of this Act, the consent authority for any coastal permit approved under this section is the regional council whose consent, but for this section, would normally be required.

Section 384A: inserted, on 7 July 1993, by section 177 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 384A(11) **occupy**: repealed, on 1 January 2005, by section 22 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 384A(12): added, on 2 September 1996, by section 20 of the Resource Management Amendment Act 1996 (1996 No 160).

### **385 Existing clean air permissions to become discharge permits**

- (1) Every permission granted under—  
(a) section 25 of the Clean Air Act 1972; or  
(b) section 31 of that Act—  
(or the corresponding provisions of any former enactment) that is in force immediately before the date of commencement of this Act shall be deemed to be a discharge permit granted under this Act on the same conditions (including those set in any enactment whether or not repealed by this Act) by the appropriate consent authority, and the provisions of this Act shall apply accordingly.
- (2) Without limiting subsection (1), every permission to which subsection (1) applies shall be deemed to include, as conditions of the permission, sections 25(7), 26(8), and 31 of the Clean Air Act 1972.
- (3) Notwithstanding section 15, a discharge permit deemed to be granted by—  
(a) subsection (1)(a) does not authorise any person to do anything referred to in section 15 except where doing such a thing—

- (i) is also authorised by a discharge permit deemed to be granted by subsection (1)(b) or by virtue of the operation of section 391 or section 391A; or
  - (ii) immediately before the date of commencement of this Act could lawfully have been carried out without being authorised by a permission referred to in subsection (1)(b):
- (b) subsection (1)(b) does not authorise any person to do anything referred to in section 15 except where doing such a thing—
  - (i) is also authorised by a discharge permit deemed to be granted by subsection (1)(a) or by virtue of the operation of section 391 or section 391A; or
  - (ii) immediately before the date of commencement of this Act could lawfully have been carried out without being authorised by a permission referred to in subsection (1)(a).
- (4) Notwithstanding subsection (2), every discharge permit deemed to be granted by subsection (1) shall be deemed to include a condition enabling the holder of the permit, at any time within 2 years after the date of commencement of this Act or until the date of expiry of the permit, whichever first occurs, to apply to the relevant regional council under section 127(1) to change the permit for the purpose of including, as conditions of that consent, matters that could have been included in a permission referred to in subsection (1)(a) or subsection (1)(b), and of enabling the consent to authorise the discharge of contaminants into the air.
- (5) The date of expiry of any discharge permit deemed to be granted by subsection (1) shall be 1 year after the date on which the permission would have expired if this Act had not been passed.

Section 385(2): substituted, on 7 July 1993, by section 178(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 385(3)(a)(i): amended, on 7 July 1993, by section 178(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 385(3)(b)(i): amended, on 7 July 1993, by section 178(2) of the Resource Management Amendment Act 1993 (1993 No 65).

**386 Existing rights and authorities under Water and Soil Conservation Act 1967**

- (1) Except as provided in subsections (2) to (7),—
- (a) every right—
    - (i) granted under section 21(3) of the Water and Soil Conservation Act 1967; or
    - (ii) deemed to be so granted by virtue of section 58(1) of the Water and Soil Conservation Amendment Act 1988; or
    - (iii) referred to in subparagraph (vii) of section 365(d)—  
(in this section called an **existing right**); and
  - (b) every authority under section 21(2) or section 21(2A) of the Water and Soil Conservation Act 1967 (in this section called an **existing authority**); and
  - (c) every right—
    - (i) referred to in section 21(1) of that Act that was granted during the period commencing on 10 September 1966 and ending with 31 December 1968; or
    - (ii) expressly authorised by any other Act (other than the Tasman Pulp and Paper Company Enabling Act 1954) or Provincial Ordinance before the passing of that Act in respect of any specified water; or
    - (iii) referred to in subparagraphs (vi) or (viii) of section 365(d); or
    - (iv) deemed to be granted under section 21(3) of the Water and Soil Conservation Act 1967 by virtue of section 25(2)(d) of the Water and Soil Conservation Amendment Act (No 2) 1971—  
(in this section called an **existing authority**)—  
that is in force immediately before the date of commencement of this Act shall be deemed to be—
  - (d) a coastal permit, where it relates to a coastal marine area; or
  - (e) where it does not relate to a coastal marine area—
    - (i) a water permit, if it authorises something that would otherwise contravene section 14; or

- (ii) a discharge permit, if it authorises something that would otherwise contravene section 15—  
granted under this Act on the same conditions (including those set out in any enactment whether or not repealed or revoked by this Act) by the appropriate consent authority; and the provisions of this Act shall apply accordingly.
- (2) Where a permit resulting from an existing right would, but for this subsection, not expire by the 35th anniversary of the date of commencement of this Act, the permit shall be deemed to include a condition to the effect that it finally expires on the 35th anniversary of the date of commencement of this Act, and that condition shall have effect in place of any other provision as to duration.
- (3) Where a permit resulting from an existing authority would, but for this subsection, not expire by the tenth anniversary of the date of commencement of this Act, the permit shall be deemed to include a condition to the effect that it finally expires on the tenth anniversary of the date of commencement of this Act, and that condition shall have effect in place of any other provision as to duration.
- (4) No enforcement order may be made under section 319 against the holder of any permit resulting from an existing authority in respect of any activity to which the permit relates except upon an application under section 316 made by the relevant regional council.
- (5) No permit resulting from an existing authority shall be transferable from site to site.
- (6) The holder of a permit resulting from an existing authority may, in order to replace that permit, apply at any time under Part 6 for another permit in respect of the activity to which the first-mentioned permit relates.
- (7) Notwithstanding section 14(3)(a), a water permit for the taking or use of geothermal water deemed to be granted by subsection (1)—
  - (a) does not authorise any person to take or use such geothermal water except where such taking or use is also authorised by—

- (i) a water permit or coastal permit deemed to be granted by virtue of section 387; or
    - (ii) a water permit or coastal permit granted in respect of an application for a licence under the Geothermal Energy Act 1953, by virtue of the operation of section 389; and
  - (b) notwithstanding paragraph (a), shall be deemed to include a condition enabling the holder of the permit, at any time within 2 years after the date of commencement of this Act, to apply to the consent authority under section 127(1) to change the permit for the purpose of including, as conditions of that permit, matters that could have been included in a licence granted under the Geothermal Energy Act 1953, and of enabling that permit to authorise the taking or use of geothermal water.
- (8) Nothing in this section applies in respect of any mining privilege within the meaning of section 413(1).

Section 386(1)(a)(iii): amended, on 7 July 1993, by section 179(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 386(1)(c)(iii): amended, on 7 July 1993, by section 179(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 386(1)(c)(iv): added, on 7 July 1993, by section 179(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 386(2): substituted, on 7 July 1993, by section 179(4) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 386(3): substituted, on 7 July 1993, by section 179(4) of the Resource Management Amendment Act 1993 (1993 No 65).

### **387 Existing geothermal licences and authorisations deemed to be water permits**

- (1) Every licence under the Geothermal Energy Act 1953 and every power or authorisation under section 11 of that Act that is in force immediately before the date of commencement of this Act shall, to the extent that it licenses or authorises the taking, tapping, use, or application of geothermal energy (within the meaning of the Geothermal Energy Act 1953)—
- (a) within the coastal marine area, be deemed to be a coastal permit; and
  - (b) in every other case, be deemed to be a water permit—

granted under this Act on the same conditions (including those set out in any enactment whether or not repealed or revoked) by the appropriate consent authority, and the provisions of this Act shall apply accordingly.

- (2) Notwithstanding section 14(3)(a), a permit deemed to be granted under subsection (1) does not authorise any person to take or use geothermal water except where such taking or use is also authorised by a water permit or a coastal permit granted under Part 6 or deemed to be so granted by virtue of section 386.
- (3) Subject to subsection (2), where, for the purpose of taking or using geothermal water, a person holds—
  - (a) a permit referred to in subsection (1) or a water permit or a coastal permit granted in respect of an application for a licence under the Geothermal Energy Act 1953, by virtue of the operation of section 389; and
  - (b) a water permit or coastal permit granted under Part 6 or deemed to be so granted by virtue of section 386—then the total amount of geothermal water which the holder of those permits shall be entitled to take or use pursuant to those permits shall be the lesser of the amounts specified in the respective permits.
- (4) From the date of commencement of this Act, the persons specified below shall be responsible for exercising any functions, powers, and duties in respect of the following conditions of, or provisions of the Geothermal Energy Act 1953 that relate to, any water permit or coastal permit under this section, any water permit or coastal permit granted under section 389 in respect of an application for a licence under the Geothermal Energy Act 1953, or any water permit or coastal permit whose conditions have been changed under section 386(7)(b):
  - (a) conditions or provisions concerning occupational safety or health, the Minister of Energy:
  - (aa) refund or remission of rentals, the Minister:
  - (b) all other conditions and provisions, the consent authority concerned.
- (5) Subsections (2) to (7) of section 108 of the Crown Minerals Act 1991, with all necessary modifications, shall apply in respect of every water permit or coastal permit to which this sec-

tion applies, as if references in those subsections to an existing privilege were references to such a water permit or such a coastal permit, as the case may require.

- (6) Where a permit resulting from a licence under the Geothermal Energy Act 1953 would, but for this subsection, not expire by the 35th anniversary of the date of commencement of this Act, the permit shall be deemed to include a condition to the effect that it finally expires on the 35th anniversary of the date of commencement of this Act, and that condition shall have effect in place of any other provision as to duration.
- (7) Where a permit resulting from a power or authorisation under section 11 of the Geothermal Energy Act 1953 would, but for this subsection, not expire by the tenth anniversary of the date of commencement of this Act, the permit shall be deemed to include a condition to the effect that it finally expires on the tenth anniversary of the date of commencement of this Act, and that condition shall have effect in place of any other provision as to duration.

Section 387(1): amended, on 7 July 1993, by section 180(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 387(4)(aa): inserted, on 2 September 1996, by section 21 of the Resource Management Amendment Act 1996 (1996 No 160).

Section 387(5): substituted, on 1 October 1991, by section 2(2) of the Crown Minerals Amendment Act 1991 (1991 No 102).

Section 387(6): added, on 7 July 1993, by section 180(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 387(7): added, on 7 July 1993, by section 180(2) of the Resource Management Amendment Act 1993 (1993 No 65).

### **388 Requirement to supply information**

- (1) Every person who exercises a resource consent that is deemed to be granted under any of sections 384(1)(b), 385, 386, 387, and 413 shall, as and when required by the consent authority to do so, supply the consent authority with information as to the nature and extent of the activities carried out under the consent and the effects of those activities upon the environment within the region.
- (2) The purpose for which information may be required under subsection (1) is to enable the consent authority to properly manage the resource affected by any such activity.



**389 Existing applications**

(1) Where—

- (a) an application had been made, before the date of commencement of this Act, for—
  - (i) a permission (other than a permission referred to in subsection (2)); or
  - (ii) a licence or permit under any of sections 146A, 156, 162, and section 165 of the Harbours Act 1950 in relation to the coastal marine area; and
- (b) the application had not been granted, declined, or withdrawn before the date of commencement of this Act; and
- (c) if the permission, licence, or permit had been granted before the date of commencement of this Act it would have become a resource consent under any of sections 383 to 387—

the application shall be deemed, for the purposes of section 88, to be an application for a resource consent of the appropriate kind; and, subject to sections 390, 390A, 390B, and 390C, this Act shall apply accordingly.

(2) This section shall not apply to any of the following:

- (a) an application for approval of a scheme plan of subdivision (to which section 404 applies); or
- (b) an application for an Order in Council to reclaim land or to carry out harbour works (to which section 393 applies); or
- (c) an application for an approval or a licence within the meaning of the Clean Air Act 1972 (to which sections 391 and 391A apply); or
- (d) an application for a lease or licence under the Marine Farming Act 1971 (to which section 397 applies).

Section 389: substituted, on 7 July 1993, by section 181 of the Resource Management Amendment Act 1993 (1993 No 65).

**390 Application being heard**

- (1) In any case where, in accordance with the enactment under which the application for a permission under section 389(1) was made, the consideration of the application involved a hearing, and that hearing had commenced before the date of com-

mencement of this Act, the application shall be determined as if this Act had not been enacted.

- (2) Where the effect of any determination under this section is that the permission, licence, or permit is granted, the grant shall constitute the grant of a resource consent of the appropriate kind under this Act; and this Act shall apply accordingly.

Section 390: substituted, on 7 July 1993, by section 181 of the Resource Management Amendment Act 1993 (1993 No 65).

### **390A Appeals**

- (1) All appeals to the Environment Court arising out of applications for permissions covered by section 389(1)(a)(i), that were lodged with the Environment Court before the date of commencement of this Act and were not completed at that date shall be continued and completed in all respects (whether or not any hearing has commenced) as if the enactments repealed by this Act continued in force.
- (2) Where any applicant or other person had a right of appeal to the Environment Court—
- (a) in any case where a determination of an application for a permission of a kind described in section 389(1)(a)(i) had been made before the date of commencement of this Act, and the right of appeal had not expired on the date of commencement of the Act; or
  - (b) in respect of a determination made under section 390 on an application for a permission of a kind described in section 389(1)(a)(i)—
- the applicant or other person may, notwithstanding the repeal or amendment of any enactment by this Act, continue to exercise that right; and any such appeal shall be continued and completed as if the relevant enactment so repealed or amended continued in force or continued in force without amendment, as the case may be.
- (3) Any person who, if this Act had not been enacted, had—
- (a) a right of appeal on any question of law; or
  - (b) a right to make an application for review—
- in respect of any determination of any application or of the determination of any appeal, to which this section or section 389(1)(a)(i) applies, may continue to exercise that right.

- (4) Where the effect of any determination made under this section is that the permission is granted, the grant shall constitute the grant of a resource consent of the appropriate kind under this Act; and this Act shall apply accordingly.
- (5) For the purposes of this section, the term **right of appeal** includes the hearing and determination of the appeal (including an appeal where the notice of appeal was lodged and the date for the lodging of the appeal expired before 1 October 1991).

Section 390A: inserted, on 7 July 1993, by section 181 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 390A(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 390A(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **390B Date on which application deemed to be made**

- (1) Except as provided in section 390, every application to which section 389 applies (unless dealt with under section 390A) shall be deemed to be made—
  - (a) on the date of commencement of this Act, where the person who is empowered to decide the application by the enactment under which the application was made remains the relevant consent authority; or
  - (b) without limiting section 399, on the date it is received by the relevant consent authority if subsection (2) applies.
- (2) Where, in respect of any application to which section 389(1) applies, the person who was empowered to decide the application by the enactment under which the application was made is no longer the relevant consent authority, that person shall, as soon as practicable, endorse on the application the date on which it was made and refer the application, and all information relevant to it, to the relevant consent authority.

Section 390B: inserted, on 7 July 1993, by section 181 of the Resource Management Amendment Act 1993 (1993 No 65).

### **390C Dealing with applications for permissions**

- (1) Where an application to which section 389(1) applies has, before the commencement of this Act, been publicly notified or advertised in accordance with the enactment under which the application was made—

- (a) the application shall not be notified under sections 95 to 95F; and
  - (b) any objection or submission in respect of the application that has been or is made in accordance with that public notification or advertisement, and which has not been withdrawn, shall be deemed to be a submission made under section 96—
- but otherwise the provisions of this Act shall apply in respect of the application.
- (2) Where the enactment under which the application to which section 389(1) applies did not require the application to be publicly notified or advertised, the application shall not be notified under sections 95 to 95F; but otherwise the provisions of this Act shall apply in respect of the application.
- (3) The granting or declining of an application to which section 389(1) applies—
  - (a) constitutes the granting or declining of a resource consent of the appropriate kind under this Act, notwithstanding that all the requirements of this Act in relation to the application for, and determination of, resource consents may not have been complied with; and
  - (b) may be appealed against in accordance with this Act.

Section 390C: inserted, on 7 July 1993, by section 181 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 390C(1)(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 390C(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **390D Timing for renewals**

- (1) Where the holder of a permission, licence, permit, or order referred to in either section 389(1) or section 389(2) (in this section called an **approval**), before the expiry of the approval and before 1 January 1992, made an application for a new approval or resource consent for the same activity, that application shall be deemed to have been made at least 6 months before the expiry of the original approval; and the provisions of section 124 shall apply accordingly.

- (2) Notwithstanding any other provision of this Act, for the purposes of subsection (1) the date of application shall be the date on which the application was lodged with the then appropriate consent authority, and not the date on which it was received by the relevant consent authority under this Act.

Section 390D: inserted, on 7 July 1993, by section 181 of the Resource Management Amendment Act 1993 (1993 No 65).

**391 Applications for licences and approvals under Clean Air Act 1972**

- (1) Where, before the date of commencement of this Act, an application has been made for—

- (a) a licence within the meaning of the Clean Air Act 1972; or
- (b) an approval under section 31 of that Act in respect of any scheduled premises within the meaning of that Act—

and the application has not been granted, declined, or withdrawn before that date, the licensing authority shall, as soon as reasonably practicable, decide whether the application is to be dealt with after that date—

- (c) by the licensing authority, in accordance with the Clean Air Act 1972 as if this Act had not been enacted; or
- (d) by the licensing authority, in accordance with the Clean Air Act 1972 as if this Act had not been enacted, but having regard to the matters set out in section 104 (which deals with matters to be considered on an application for a resource consent); or
- (e) by the appropriate consent authority, in accordance with this Act, as if the application had been made under this Act—

and any such decision shall be final and not subject to appeal to, or review by, any court or the Environment Court.

- (2) When making a decision for the purposes of subsection (1), the licensing authority shall have regard to—

- (a) the progress made in consideration of the application; and

- (b) any representations (whether written or not) made to the authority by the applicant and any other person as to the appropriate manner of dealing with the application—  
and shall also ensure that written notice of the decision and anything that the applicant is required to do as a result of the decision is served, as soon as reasonably practicable after the decision is made, on every person (including the applicant) whom the licensing authority considers should receive notice.
- (3) Where the licensing authority decides that the application should be dealt with in accordance with subsection (1)(e), the licensing authority shall as soon as reasonably practicable refer the application, and all information relevant to it, to the relevant consent authority and, for the purposes of section 88, the application shall be deemed to be an application for a discharge permit made by the applicant on the date that it is received by the relevant consent authority.
- (4) The granting of an application to which subsection (1) applies in accordance with this section—
  - (a) constitutes the granting of a discharge permit under this Act, notwithstanding that all requirements of this Act in relation to applications for, and granting of, discharge permits may not have been complied with; and
  - (b) may be appealed against in accordance with this Act accordingly.
- (5) A person who, if this Act had not been enacted, had—
  - (a) a right of appeal; or
  - (b) a right to make any application for review—in respect of any application to which subsection (1) applies or any decision thereon may continue to exercise that right.
- (6) In this section, **licensing authority** has the same meaning as in section 2(1) of the Clean Air Act 1972 before its repeal by this Act.

Section 391(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### **391A Resource consents following approval under Clean Air Act 1972**

- (1) Where—

- (a) before the date of commencement of this Act, any person has obtained an approval under section 31 of the Clean Air Act 1972 in respect of any scheduled premises within the meaning of that Act and that person had not applied for a licence to operate under section 25 of the Clean Air Act 1972; and
  - (b) that person makes an application for a resource consent to discharge any contaminant into air from those premises—
- then the consent authority may grant a discharge permit to the approval holder under the provisions of subsection (2) if the consent authority is satisfied that—
- (c) the plant and equipment has been installed within the scheduled premises in accordance with the approval; and
  - (d) the conditions proposed in the approval as to the construction of the plant and equipment have all been met by the applicant; and
  - (e) the approval is subject to conditions of operation; and
  - (f) every local authority affected by an application to which subsection (2) applies has received at least 10 working days' opportunity to comment on or seek variation to any of those conditions, and that such local authorities have not sought any variation to the conditions of approval within that time; and
  - (g) the conditions of operation contained in the approval are appropriate and adequate.
- (2) Where the provisions of subsection (1) are satisfied, the consent authority shall determine the application in accordance with the following provisions:
- (a) the application shall not be notified under sections 95 to 95F; and
  - (b) the consent authority shall not hold a hearing in terms of section 100 to determine the application; and
  - (c) any discharge permit granted under this section shall expire 1 year after the date on which it commences; and
  - (d) in all other respects the application shall be determined by the consent authority in accordance with the provisions of this Act.

Section 391A: inserted, on 7 July 1993, by section 182 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 391A(2)(a): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**392 Provisions of Clean Air Act 1972 may be considered  
on applications for resource consents for discharging  
contaminants into the air**

*[Expired]*

Section 392: expired, on 1 October 1994, by section 392(2).

**393 Applications for Orders in Council to reclaim land and  
approval for harbour works**

(1) Where, before the date of commencement of this Act, an application has been made under the Harbours Act 1950—

- (a) for an Order in Council under section 175(2) or section 175(3) of that Act to authorise reclamation of land, and a recommendation to the Governor-General in respect of the application has not been made under section 175 of that Act by the Minister of Transport or the Minister of Conservation or both; or
- (b) for approval under section 178(1)(b) or (2) of that Act to carry out harbour works, and approval of the application has not been given by the Minister of Transport or the Minister of Conservation or both—

then the application shall be deemed to be an application for a coastal permit for such reclamation or harbour works and—

- (c) the Minister or Ministers shall as soon as practicable—
  - (i) endorse on every such application the date on which it was made; and
  - (ii) refer every such application and all information relevant to it to the relevant regional council; and
- (d) for the purposes of this Act (but without limiting section 399), the application shall be deemed to have been made to the appropriate regional council on the date that it is received by the regional council; and
- (e) in the case of an application for approval to carry out harbour works in respect of which—



- (i) an Order in Council under section 175(2) or section 175(3) of the Harbours Act 1950 has been made; or
  - (ii) before the date of commencement of this Act, under section 33 or section 102A or section 110 of the Town and Country Planning Act 1977, a consent relating to the harbour works the subject of the application has been granted or has been sought but has not been determined at that date; or
  - (iii) the harbour works the subject of the application are, at the date of commencement of this Act, a permitted use under the provisions of any operative maritime planning scheme under the Town and Country Planning Act 1977 or under any proposed variation, change, or review of any operative maritime planning scheme under that Act which, at the date of commencement of this Act, has been publicly notified—
- the application shall not be notified under sections 95 to 95F; and
- (f) notwithstanding paragraph (e), where the harbour works the subject of any such application are a restricted coastal activity (including a restricted coastal activity the subject of a direction in accordance with section 372), the provisions of sections 117 to 119A shall apply except that the application shall not be notified and the Minister of Conservation shall be the only person who may make a submission on the application.
- (2) The granting of an application to which subsection (1) applies in accordance with this section—
  - (a) constitutes the granting of a resource consent of the appropriate kind under this Act notwithstanding that all requirements of this Act in relation to applications for, and the granting of, resource consents may not have been complied with; and
  - (b) may be appealed against in accordance with this Act accordingly.
- (3) A person who, if this Act had not been enacted, had—

- (a) a right of appeal; or
  - (b) a right to make any application for review—  
in respect of any application to which subsection (1) applies  
or any decision thereon may continue to exercise that right.
- (4) Where, before the date of commencement of this Act,—
- (a) the Governor-General had authorised the reclamation of  
land by Order in Council under section 175(2) or (3) of  
the Harbours Act 1950; and
  - (b) the Chief Surveyor had approved the survey plan as re-  
ferred to in section 175B(4) of the Harbours Act 1950  
(where such approval was a condition of the authority  
to reclaim)—

then, notwithstanding anything in this Act, the Governor-General may vest the land in the grantee of the authority to reclaim (or any successor), by Order in Council under the Harbours Act 1950 as if this Act had not been enacted.

Section 393(1)(b): amended, on 7 July 1993, by section 184(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 393(1)(e): substituted, on 7 July 1993, by section 184(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 393(1)(e): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 393(1)(f): added, on 7 July 1993, by section 184(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 393(4): added, on 7 July 1993, by section 184(3) of the Resource Management Amendment Act 1993 (1993 No 65).

### **394 Transitional provisions relating to setting aside of esplanade reserves on reclamation**

*[Repealed]*

Section 394: repealed, on 7 July 1993, by section 185 of the Resource Management Amendment Act 1993 (1993 No 65).

### **395 Applications for works, etc, in coastal marine area**

*[Repealed]*

Section 395: repealed, on 1 October 2009, by section 148 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**396 Applications for marine farming in coastal marine area**  
*[Repealed]*

Section 396: repealed, on 1 January 2005, by section 23 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**396A Notification of lapsing, cancellation, or surrender of coastal permit for marine farming**  
*[Repealed]*

Section 396A: repealed, on 1 January 2005, by section 24 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**396B Notification of rule change affecting marine farming**  
*[Repealed]*

Section 396B: repealed, on 1 January 2005, by section 25 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**397 Existing applications for marine farming leases**  
*[Repealed]*

Section 397: repealed, on 1 January 2005, by section 26 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**398 Regional councils not to accept applications for coastal permits in areas notified by Minister of Fisheries**  
*[Repealed]*

Section 398: repealed, on 1 January 2005, by section 27 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**399 Applications received on same day**  
Where—

- (a) in accordance with section 390B(2) or section 393(1)(c)(ii) or section 397(2)(b), a consent authority receives, on the same date, 2 or more applications; and
- (b) those applications do not relate to the same proposal and were not made by the same person; and
- (c) the granting of one of those applications would mean that it would be likely that any other of those applications would not be granted or, if granted, would be granted on conditions that would not otherwise be imposed and which would be less favourable to the interests of the relevant applicant—

the consent authority shall process and determine those applications under this Act in a sequence commencing with the application which, in accordance with any of those provisions, is endorsed with the earliest date, and ending with the application so endorsed with the latest date, and this Act shall apply accordingly.

Section 399(a): amended, on 7 July 1993, by section 190 of the Resource Management Amendment Act 1993 (1993 No 65).

**400 Applications under Marine Farming Act 1971 for prohibited anchorages, etc**

- (1) Where, immediately before the date of commencement of this Act, an application has been made under section 28(1) of the Marine Farming Act 1971 for permission to declare any specified part of a licensed area to be a prohibited anchorage or a prohibited navigation area and that application had not been determined—
  - (a) the application shall be determined under the Marine Farming Act 1971 as if this Act had not been enacted; and
  - (b) if the controlling authority grants the application, then notwithstanding the repeal of section 28 of that Act, but subject to subsection (3), such prohibition shall remain in force and the provisions of subsections (4) to (8) of the said section 28 shall continue to apply to that prohibition as if this Act had not been enacted.
- (2) Where, immediately before the date of commencement of this Act, any part of a lease or licence under the Marine Farming Act 1971 has been declared to be a prohibited anchorage or a prohibited navigation area under section 28(4) of that Act and such prohibition remains in force, then notwithstanding the repeal of section 28 of that Act, but subject to subsection (3), such prohibition shall remain in force and the provisions of subsections (4) to (8) of the said section 28 shall continue to apply to that prohibition as if this Act had not been enacted.
- (3) After the date of commencement of this Act, those functions that were exercisable by a controlling authority under section 28(5) of the Marine Farming Act 1971 before the repeal of that subsection by this Act may continue to be exercised by any

regional council in accordance with that subsection as if that subsection remained in force, but the regional council shall not make any declaration under that subsection without the prior consent of the Minister of Fisheries given with the concurrence of the Minister of Transport.

**401 Conditions of deemed resource consents**

Where the conditions of any permission that is deemed to be a resource consent by virtue of any of sections 383 to 387, or of any mining privilege that is a deemed permit under section 413, provide that a Minister of the Crown, a local authority, or any other person may exercise any powers or discretions in relation to the permission (other than as the holder thereof), from the date of commencement of this Act those powers or discretions shall be exercised by the appropriate consent authority and not by the Minister, local authority, or person.

**401A Transitional coastal occupation charges**

- (1) Where a person is occupying the coastal marine area, either as a holder of a resource consent or as a result of permitted activity in a plan, there is implied a condition that that person must, from the commencement of this section until a regional coastal plan or plan change is operative which contains either a charging regime or a statement to the effect that no regime may be introduced or 30 June 2007 (whichever is earlier), pay to the relevant regional council, if requested by that regional council, any sum required to be paid for the occupation of the coastal marine area by any regulations made under section 360(1)(c).
- (2) Any money received by the regional council under subsection (1) may be used only for the purpose of promoting the sustainable management of the coastal marine area.
- (3) Where a regional council prepares or changes a regional coastal plan or proposed regional coastal plan in the period from the commencement of this section until 1 July 2007, that plan is not required to comply with section 64A.
- (4) Where no provision for coastal occupation charges has been made in a regional coastal plan or proposed regional coastal plan by 1 July 2007, the regional council must, in the first proposed regional coastal plan or change to a regional coastal

plan notified after 30 June 2007, include a statement or regime on coastal occupation charges in accordance with section 64A.

Section 401A: inserted, on 17 December 1997, by section 62 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 401A(1): amended, on 1 January 2005, by section 28(1) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 401A(3): amended, on 1 January 2005, by section 28(2) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 401A(4): amended, on 1 January 2005, by section 28(3)(a) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 401A(4): amended, on 1 January 2005, by section 28(3)(b) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

#### **401B Obligation to pay coastal occupation charge deemed condition of consent**

In every coastal permit that—

- (a) authorises the holder to occupy any land of the Crown in the coastal marine area; and
- (b) was granted in the period commencing on 1 October 1991 and ending on the date a regional coastal plan containing provisions in accordance with section 64A is operative in relation to the part of the coastal marine area that the permit relates to,—

there is implied a condition that the holder must at all times throughout the period of the permit pay to the relevant regional council any sum of money required to be paid (if any) by that regional coastal plan.

Section 401B: inserted, on 17 December 1997, by section 62 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 401B(a): amended, on 1 January 2005, by section 29 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

### *Subdivision and development*

#### **402 Existing subdivision approvals**

- (1) Nothing in section 11 or Part 10 shall apply to any subdivision in respect of which there is in force immediately before the commencement of this Act—
  - (a) an approval under section 279 of the Local Government Act 1974 of a scheme plan; or

- (b) an approval under section 305 of that Act of a survey plan.
- (2) Parts 20 and 21 of the Local Government Act 1974 shall continue to apply to any subdivision referred to in subsection (1) as if this Act had not been enacted.
- (3) For the purposes of subsection (1), an approval under section 279 of the Local Government Act 1974 shall be deemed to be in force notwithstanding—
  - (a) that there exists a right of objection under section 299 of that Act or a right of appeal under section 300 or section 301 of that Act; or
  - (b) that any such right of objection or that any such right of appeal has been exercised by any person.

**403 Existing objections and appeals in relation to subdivisions**

- (1) Nothing in section 11 or Part 10 shall apply to any subdivision in respect of which, before the date of commencement of this Act,—
  - (a) the territorial authority has refused to approve a scheme plan of subdivision under sections 274 and 279(1)(f) of the Local Government Act 1974; and
  - (b) a right of objection under section 299 of that Act, or a right of appeal under section 300 of that Act, has been exercised by any person in respect of that refusal.
- (2) Parts 20 and 21 of the Local Government Act 1974 shall continue to apply to any subdivision referred to in subsection (1) as if this Act had not been enacted.

**404 Existing applications for approval**

Where an application for approval of a scheme plan of subdivision has been made under section 275 of the Local Government Act 1974 before the commencement of this Act, and the territorial authority has not exercised its powers under section 279 of that Act in relation to the scheme plan, the application shall be deemed—

- (a) to be an application for a subdivision consent under this Act and shall be dealt with accordingly; and
- (b) to have been received by the territorial authority on the date of commencement of this Act.

**405 Transitional provisions for subdivisions**

- (1) For the purpose of subsections (2) and (3), the term **district plan** means a district plan or a proposed plan constituted under section 373 that has been publicly notified under the Town and Country Planning Act 1977 before the commencement of this Part.
- (2) Notwithstanding anything in section 374(3) or (4), in respect of any district plan—
  - (a) every subdivision of land that is contrary to the provisions of the district plan shall be deemed to be a non-complying activity in respect of that plan; and
  - (b) every subdivision of land which is subject to a discretion contained in the provisions of that district plan relating to the approval or refusal of a subdivision of land is deemed to be a discretionary activity in respect of that plan; and
  - (c) every other subdivision of land shall be deemed to be a controlled activity in respect of that plan.
- (3) Notwithstanding the provisions of subsection (2) or any provisions in a district plan, a subdivision of land to be effected by a grant of a cross lease or a company lease, or by the deposit of a unit plan, is deemed—
  - (a) to be a controlled activity in respect of a district plan—
    - (i) if the building or part of a building in respect of which the cross lease or company lease is to be granted; or
    - (ii) if the units on the unit plan to be deposited—  
is or are intended to be used solely or principally for residential or commercial or industrial purposes, or any 2 or more such purposes; and
  - (b) to be a non-complying activity in respect of a district plan in every other case.
- (4) The application of this section may be excluded or modified at any time in accordance with Schedule 1.
- (5) This section shall cease to have effect in a district on the date that the proposed district plan for the district becomes operative, not being a proposed district plan constituted under section 373.



Section 405: substituted, on 7 July 1993, by section 191 of the Resource Management Amendment Act 1993 (1993 No 65).

**405A Transitional provisions for esplanade reserves where land subdivided or road stopped**

- (1) Subject to subsections (3) and (4) and with the consent of the Minister of Conservation, on any road stopped under the Local Government Act 1974, and on every application for subdivision consent in respect of any allotment of less than 4 hectares, a territorial authority may impose a condition, that—
  - (a) the esplanade reserve required to be set aside under section 230 of this Act or section 345(3) of the Local Government Act 1974 along the mark of mean high water springs of the sea, or along the margin of any lake, or along the bank of any river, may be reduced or increased from 20 metres to any width; or
  - (b) section 230 of this Act and section 345(3) of the Local Government Act 1974 shall not apply in respect of land along the mark of mean high water springs of the sea, or along the margin of any lake, or along the bank of any river, to which the application relates; or
  - (c) that, instead of an esplanade reserve, an esplanade strip of any width specified may be created under section 232.
- (2) On every application for a subdivision consent, a territorial authority shall consider the purposes of esplanade reserves and esplanade strips in section 229 and may impose, where it considers it appropriate, in respect of an allotment of 4 hectares or more, in terms of section 230, a condition that an esplanade reserve or esplanade strip of any specified width be set aside or created on those allotments.
- (3) Before including a condition described in subsection (1)(a) for a reduction in width in a subdivision consent, the territorial authority shall be satisfied that the value of the esplanade reserve, in terms of the purposes specified in section 229, will not be significantly diminished.
- (4) Before including a condition described in subsection (1)(b) in a subdivision consent, the territorial authority shall be satisfied that—

- (a) notwithstanding section 229, it would not be appropriate in the circumstances including (but not limited to) reasons of security, public safety, or minor boundary adjustments, for an esplanade reserve or esplanade strip to be required; or
  - (b) the land has little or no value in terms of the purposes specified in section 229; or
  - (c) any value the land has in terms of the purposes specified in section 229 can be adequately provided by other means.
- (5) The provisions of Part 10 shall apply to any esplanade reserve or esplanade strip required under this section.
- (6) Any declaration or decision under section 289(7) of the Local Government Act 1974, or under any corresponding earlier enactment, to exclude the bank of any river from the requirement of an esplanade reserve shall be deemed to be a district rule for the purposes of section 77, where that direction had effect on 30 September 1991.
- (7) Where any action taken pursuant to a declaration or decision which is deemed to be a district rule under subsection (6) was taken before the commencement of this subsection, that action is hereby validated and declared to have been lawfully carried out.
- (8) The application of this section may be excluded or modified at any time in accordance with Schedule 1.
- (9) This section shall cease to have effect in a district on the date that the proposed district plan for the district becomes operative, not being a proposed district plan constituted under section 373.

Section 405A: inserted, on 7 July 1993, by section 191 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 405A(1): amended, on 17 December 1997, by section 63 of the Resource Management Amendment Act 1997 (1997 No 104).

#### **406 Grounds of refusal of subdivision consent**

- (1) Notwithstanding anything to the contrary in Parts 6 or 10, a territorial authority—
  - (a) may refuse to grant a subdivision consent if it considers that either—

- (i) the land in respect of which the subdivision is proposed is not suitable; or
  - (ii) the proposed subdivision would not be in the public interest:
- (b) may refuse to grant a subdivision consent if in the case of any allotment in respect of which a subdivision consent is sought, adequate provision has not been made or is not practicable—
  - (i) for stormwater drainage; or
  - (ii) for the disposal of sewage; or
  - (iii) except in the case of any allotment to be used solely or principally for rural purposes, for the supply of water or electricity.
- (2) This section shall cease to have effect in a district on the date that the proposed district plan for the district becomes operative, not being a proposed district plan constituted under section 373.

Section 406(1)(a): amended, on 1 August 2003, by section 91 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 406(2): added, on 7 July 1993, by section 192 of the Resource Management Amendment Act 1993 (1993 No 65).

#### **407 Subdivision consent conditions**

- (1) Where an application for a subdivision consent is made in respect of land for which there is no district plan, or where the district plan does not include relevant provisions of the kind contemplated by section 108(2)(a) or 220(1)(a), the territorial authority may impose, as a condition of the subdivision consent, any condition that could have been imposed under sections 283, 285, 286, 291, 321A, or 322, as the case may be, of the Local Government Act 1974 if those sections had not been repealed by this Act.
- (2) For the purposes of subsection (1), every reference in sections 283, 285, 286, 291, 321A, and 322 of the Local Government Act 1974—
  - (a) to an application for the approval of a scheme plan, shall be deemed to be a reference to an application for a resource consent; and

- (b) to an allotment on a scheme plan, shall be deemed to be a reference to the allotments in respect of which a subdivision consent is sought.
- (3) Notwithstanding the limitation on the imposition of conditions in section 105(1), where an application is made for a subdivision consent and the subdivision is deemed to be a controlled activity under section 405, conditions may be imposed under sections 108 and 220.
- (4) This section applies to applications for subdivision consent in respect of every kind of subdivision of land within the meaning of section 218(1), including (but not by way of limitation) any subdivision to be effected by the grant of a company lease or cross lease or by deposit of a unit title.
- (5) This section shall cease to have effect in a district on the date that the proposed district plan for the district becomes operative, not being a proposed district plan constituted under section 373.

Section 407(1): amended, on 17 December 1997, by section 64 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 407(3): added, on 7 July 1993, by section 193 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 407(4): added, on 7 July 1993, by section 193 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 407(5): added, on 7 July 1993, by section 193 of the Resource Management Amendment Act 1993 (1993 No 65).

#### **408 Existing approvals for unit plans, cross lease plans, and company lease plans**

- (1) Nothing in section 11 or Part 10 shall apply—
  - (a) to the deposit of a unit plan, or to the issue of a certificate of title for any unit on such a plan, where, before the date of commencement of this Act, a certificate has been given in respect of the plan under section 5(1)(g) of the Unit Titles Act 1972 or section 5(3)(c) of the Unit Titles Amendment Act 1979;
  - (b) to the deposit of a plan to give effect to the registration of a cross lease, or to the issue of a certificate of title for a cross lease in respect of a building or part of a building shown on a plan, where, before the date of commencement of this Act, a certificate has been given

in respect of the plan under section 314 of the Local Government Act 1974:

- (c) to the deposit of a plan to give effect to the grant of a company lease, or to the registration or issue of a certificate of title for a company lease in respect of a building or part of a building shown on a plan, where the plan is approved by the Chief Surveyor before the date of commencement of this Act.
- (2) Nothing in section 224(f) shall apply to any subdivision of land for which a subdivision consent was granted on or after 1 October 1991 and on or before 30 June 1992.

Section 408(2): added, on 1 July 1992, by section 92(1) of the Building Act 1991 (1991 No 150).

#### **409 Financial contributions for developments**

- (1) Subject to section 410, where an application for a resource consent for a development is made in respect of land for which there is no district plan, or where the district plan does not include provisions of the kind contemplated by section 108(2)(a), the territorial authority may impose, as a condition of the consent,—
- (a) any condition described in any of sections 283, 289, 291, 292, 321A, or 322 of the Local Government Act 1974 that, by virtue of section 281 or section 294B of that Act, could have been imposed in respect of a development if those sections had not been repealed by this Act;
  - (b) any requirement that could have been imposed in respect of a development under section 294 of the Local Government Act 1974 (if that section had not been repealed by this Act) to pay a reserves contribution or to set aside, as public reserve, any area of land.
- (2) For the purposes of subsection (1)—
- (a) every reference in sections 283, 289, 291, 292, 321A, and 322 of the Local Government Act 1974—
    - (i) to an application for the approval of a scheme plan, shall be deemed to be a reference to an application for a resource consent; and

- (ii) to the approval of a scheme plan, shall be deemed to be a reference to a grant of a resource consent; and
  - (b) every reference in section 294 of the Local Government Act 1974 to a requirement under section 293 of that Act to notify the Council of a proposed development, shall be deemed to be a reference to an application for a resource consent.
- (2A) For the purposes of subsection (1)(b), section 294 of the Local Government Act 1974 shall be read as if that section had not been repealed by this Act and as if section 294(1) of that Act did not contain the words “and the assessed value of the development is not in excess of \$50 million”.
- (3) For the purposes of this section and sections 410 and 411, **development** has the same meaning as in section 271A of the Local Government Act 1974 before its repeal by this Act.
- (4) Where a district plan or proposed district plan has been deemed to be constituted by section 373 and a provision, expressly or by implication and whether or not subject to conditions, of that plan or proposed plan authorised a development without further consent or approval from the former consent authority being required, then, notwithstanding section 374(3)(a), such a development is deemed to be a controlled activity only for the purposes of subsections (1) and (2), and any application for a land use consent to which this subsection applies shall not be notified under sections 95 to 95F.
- (5) This section shall cease to have effect in a district on the date that the proposed district plan for the district becomes operative, not being a proposed district plan constituted under section 373.

Section 409(1): amended, on 17 December 1997, by section 65 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 409(2A): inserted, on 7 July 1993, by section 194(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 409(4): added, on 7 July 1993, by section 194(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 409(4): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 409(5): added, on 7 July 1993, by section 194(2) of the Resource Management Amendment Act 1993 (1993 No 65).

**410 Existing developments**

Parts 20 and 21 of the Local Government Act 1974 shall continue to apply to any development that, before the commencement of this Act, is notified to a territorial authority under section 293(1) of the Local Government Act 1974 as if this Act had not been enacted.

**411 Restriction on imposition of conditions as to financial contributions**

- (1) A consent authority shall not impose a condition of the type contemplated by section 108(2)(a) on any resource consent where a development levy within the meaning of section 270 of the Local Government Act 1974 (before its repeal by this Act) has been fixed and is paid or payable in respect of the activity in respect of which the application for the resource consent is made.
- (2) Where financial contributions under Part 20 and 21 of the Local Government Act 1974 (including reserves contributions and development levies) have been fixed and have been paid, or are paid or payable in respect of an activity, the consent authority shall deal with the money in accordance with the requirement of section 223F of the Local Government Act 1974 and in reasonable accordance with the purposes for which the money was received.

Section 411(1): amended, on 17 December 1997, by section 66 of the Resource Management Amendment Act 1997 (1997 No 104).

Section 411(2): added, on 7 July 1993, by section 195 of the Resource Management Amendment Act 1993 (1993 No 65).

**412 Expiry of certain sections**

*[Repealed]*

Section 412: repealed, on 7 July 1993, by section 196 of the Resource Management Amendment Act 1993 (1993 No 65).

*Current mining privileges relating to water***413 Current mining privileges to become deemed permits**

- (1) Except as provided in subsections (2) to (10), every—
- (a) current mining privilege within the meaning of section 2 of the Water and Soil Conservation Amendment Act 1971; and
  - (b) right granted or authorised under the Water and Soil Conservation Act 1967 in substitution for a current mining privilege, on an application made by the holder of that privilege—
- that is in force immediately before the date of commencement of this Act (in this section and in sections 414 to 417 called a **mining privilege**) shall be deemed to be—
- (c) a water permit, if it authorises something that would otherwise contravene section 14; or
  - (d) a discharge permit, if it authorises something that would otherwise contravene section 15; or
  - (e) a permit that confers on its holder rights over land in respect of which the holder is not the owner,—
- granted by the appropriate consent authority under this Act on the same conditions (including those set out in any enactment whether or not repealed or revoked by this Act) and the provisions of this Act (other than sections 128 to 133) shall apply accordingly. Every such permit is called a **deemed permit** in this section and in sections 414 to 417.
- (2) Without limiting subsection (1), every deemed permit resulting from a mining privilege shall be deemed to include, as conditions of the permit, such of the provisions of sections 4 to 11, 13, 14, 16, 19(1) and (5), and 23(1)(a) and (2) of the Water and Soil Conservation Amendment Act 1971 as applied to the mining privilege immediately before the date of commencement of this Act.
- (3) Every deemed permit resulting from a mining privilege under subsection (1)(c) or (d) shall be deemed to include a condition to the effect that it finally expires on the 30th anniversary of the date of commencement of this Act.
- (3A) Subject to subsection (3), sections 19(4) and 23(1)(b) of the Water and Soil Conservation Amendment Act 1971 shall con-



- tinue to apply to those deemed permits to which they applied immediately before the date of commencement of this Act.
- (4) Sections 12 and 30 to 32 of the Water and Soil Conservation Amendment Act 1971 shall apply to deemed permits as if—
- (a) that Act had not been repealed; and
  - (b) those permits were still current mining privileges under that Act; and
  - (c) every reference to the Board were a reference to the appropriate regional council.
- (5) Notwithstanding section 122, every deemed permit shall be deemed to be a chattel interest in land and—
- (a) subject to sections 136 and 137, may be sold, encumbered, transmitted, seized under writ of execution or warrant, or otherwise disposed of, as fully as a chattel interest in land; but
  - (b) no dealing or disposition of a kind referred to in paragraph (a) shall have effect until written notice of the dealing or disposition is received by the appropriate regional council.
- (6) No enforcement order may be made under section 319 against the holder of any deemed permit in respect of any activity to which the permit relates except upon an application under section 316 made by—
- (a) the relevant regional council; or
  - (b) a Minister of the Crown.
- (7) The holder of a deemed permit may, in order to replace that permit, apply at any time under Part 6 for another permit in respect of the activity to which the deemed permit relates.
- (8) Subject to subsection (9), the holder of a deemed permit may transfer the holder's interest in the permit in accordance with sections 136 and 137.
- (9) The following provisions apply to a permit that is deemed by subsection (1)(c) to be a water permit:
- (a) notwithstanding section 136(2)(b)(i), no transfer of the whole or any part of a deemed permit may take place except upon an application made under section 136(4); and

- (b) notwithstanding anything to the contrary in section 136(5), the interest or part transferred shall be deemed to be a new permit granted under this Act, and—
    - (i) shall be subject to section 122 (which describes the nature of a resource consent) and shall not be a chattel interest in land and shall not confer on its holder any rights over land; and
    - (ii) shall be subject to sections 128 to 132 (which relate to the review of consent conditions); and
    - (iii) shall only be transferable in accordance with section 136; and
  - (c) in addition to the matters set out in section 136(4)(b), in considering an application to transfer the whole or part of a deemed permit to another site, the regional council shall have regard to the effect such a transfer would have on the relative priority and entitlement to water in the catchment and may modify the priority or other conditions of the transferred deemed permit; and
  - (d) for the purposes of this subsection, the term **transfer**, in relation to the whole or part of a deemed permit, means transfer in accordance with section 136 to another person on another site, or to another site, and the terms **transferred** and **transferable**, where they appear in this subsection, have a corresponding meaning.
- (10) Section 18 of the Water and Soil Conservation Amendment Act 1971 shall continue to apply in respect of those deemed permits to which it applied before the date of commencement of this Act as if this Act had not been enacted.

Section 413(1)(d): amended, on 7 July 1993, by section 197(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 413(1)(e): added, on 7 July 1993, by section 197(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 413(2): amended, on 7 July 1993, by section 197(3)(a) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 413(2): amended, on 7 July 1993, by section 197(3)(b) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 413(3): amended, on 7 July 1993, by section 197(4) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 413(3A): inserted, on 7 July 1993, by section 197(5) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 413(9)(c): substituted, on 7 July 1993, by section 197(6) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 413(9)(d): added, on 7 July 1993, by section 197(6) of the Resource Management Amendment Act 1993 (1993 No 65).

**414 Deemed permits to be subject to regional rules**

- (1) A regional council may, in accordance with section 65, include a rule in a regional plan for the purpose of securing minimum instream flow which has the effect of—
  - (a) restricting the amount of water which the holder of a particular deemed permit may—
    - (i) take, use, dam, or divert; or
    - (ii) discharge, or discharge a contaminant into; or
  - (b) prohibiting the holder of a particular deemed permit from—
    - (i) taking, using, damming, or diverting water; or
    - (ii) discharging water, or a contaminant into water,—if—
  - (c) the holder of that deemed permit is—
    - (i) the relevant regional council; or
    - (ii) a person who requests the regional council to include such a rule in a plan; and
  - (d) that deemed permit is to be surrendered when the plan including the rule becomes operative; and
  - (e) the regional council is satisfied that the effect of the rule on the exercise of the rights given by every other deemed permit will not exceed the effect that exercising to the full the rights given by the particular deemed permit that is to be surrendered would otherwise have had.
- (2) Subsection (1) applies—
  - (a) notwithstanding any other provisions of this Act; and
  - (b) notwithstanding the conditions of the deemed permit which will be surrendered once the plan including the rule becomes operative.
- (3) If a rule of the kind referred to in subsection (1) is included in a plan, the deemed permit shall be deemed to have been surrendered on the day on which the rule becomes operative, notwithstanding any other enactment or rule of law.

- (4) Notwithstanding sections 65(5) and 79(3) (which deal with the change and review of regional plans), once a regional plan including a rule of the kind referred to in subsection (1) becomes operative, then during the period described in subsection (5) the plan shall remain operative and no change may be made to the plan that has the effect of diminishing or removing any prohibition or restriction imposed by the rule.
- (5) For the purposes of subsection (4), the period commences on the date on which the plan including the rule becomes operative and ends with the date on which the deemed permit would have expired if it were not surrendered, which end date shall be specified in the plan.
- (6) Every regional council shall—
  - (a) when giving public notice, in accordance with Schedule 1, of a proposed plan including a rule of the kind referred to in subsection (1), identify the deemed permit which will be surrendered once the plan including the rule becomes operative; and
  - (b) serve on each holder of a deemed permit which will be affected by the rule if it becomes operative, a notice—
    - (i) identifying the deemed permit which will be surrendered once the plan including the rule becomes operative; and
    - (ii) stating the proposed rule and the effect of the rule and this section on the holder's permit; and
    - (iii) stating the effect of section 416 (which relates to compensation).
- (7) In this section, **deemed permit** includes part of a deemed permit.

#### **415 Acquisition of deemed permits**

- (1) Notwithstanding sections 136 and 137, a regional council may take, purchase, or acquire the whole or part of any deemed permit—
  - (a) as a public work under the Public Works Act 1981; or
  - (b) by agreement or otherwise.
- (2) Notwithstanding section 413(9)(b)(i), for the purposes only of the Public Works Act 1981, this section, and section 416(4), a deemed permit that has been transferred to a new site shall

be deemed to continue to be a chattel interest in land, and it shall be sufficient identification of the interest in land created or deemed to be so created by the deemed permit to describe it as the whole of the interest created by the permit, or to use the description set out in the permit.

**416 Compensation**

- (1) No compensation may be claimed for any loss, damage, or injurious affection resulting from the operation of any of subsections (1) to (7) of section 413.
- (2) Notwithstanding section 85 but except as provided in subsection (3), the holder of a deemed permit—
  - (a) taken or acquired in whole or in part under section 415; or
  - (b) whose estate or interest in land is injuriously affected by, or who suffers any damage resulting from, a regional rule of the kind referred to in section 414—shall be entitled to compensation from the regional council for such taking, acquisition, injurious affection, or damage.
- (3) When determining for the purposes of subsection (2)(b) the amount of any loss, damage, or injurious affection suffered by a holder of a deemed permit, the entitlement of a holder of any other deemed permit that is surrendered at the time the rule becomes operative shall be regarded as being used in full throughout the remainder of the duration of the first-mentioned permit.
- (4) Except as provided in subsection (3),—
  - (a) claims for compensation under this section or under section 415 shall be made and determined in accordance with the Public Works Act 1981; and
  - (b) when determining the amount of compensation payable under the Public Works Act 1981 for any loss, damage, or injurious affection suffered, or for the taking or acquisition of the deemed permit,—
    - (i) for the purposes of section 62 of that Act in the case of a claim for injurious affection or damage resulting from a regional rule of the kind referred to in section 414, the specified date shall be the date the regional rule becomes operative; and

- (ii) for the purposes of that Act, the deemed permit shall be deemed to be due to expire on the 30th anniversary of the specified date.

**417 Permits over land other than that of holders to be produced in Land Transfer Office**

- (1) Where, immediately before the date of commencement of this Act, a mining privilege that is deemed to be a permit under section 413(1)(e) conferred on its holder rights over land in respect of which the holder is not the owner, then the holder of the deemed permit—
  - (a) may continue to exercise those rights, and the provisions of this section shall apply accordingly; and
  - (b) may, at any time, obtain from the relevant regional council, for the purpose of registration against any certificate of title, lease, licence to occupy, or provisional register registered under the Land Transfer Act 1952, a certificate specifying the rights which the holder of that permit has in respect of that land by virtue of paragraph (a).
- (2) Every such certificate shall be in writing and—
  - (a) have affixed to it the common seal of the consent authority; and
  - (b) specify the rights which the holder of the permit has by virtue of subsection (1)(a) and the parcel or parcels of land affected (including the file reference); and
  - (c) have endorsed on the certificate or refer to a diagram or plan attached to the certificate (which need not be a survey plan), showing the course of any race and, as the case may be, the site of any dam and the boundaries of any part of the land which the permit specifies as being affected except that, where it is not practicable to show the true course or site or part of the land, it shall be indicated as nearly as possible, and, until the contrary is proved, the course or site or part of the land so indicated shall be deemed to be the true course, site, or boundaries, as the case may be.
- (3) No action shall lie against the Crown under Part 11 of the Land Transfer Act 1952 by reason of any certificate registered under

this section not indicating the true course of any race, the site of any dam, or boundary of any part of the land.

- (4) Every such certificate shall be deemed—
  - (a) to be an instrument capable of registration under the Land Transfer Act 1952 and, when so registered, to create in favour of the permit holder an interest in the land in respect of which it is registered, within the meaning of section 62 of that Act; and
  - (b) when so registered, to be binding on any registered proprietor of an estate in fee simple or leasehold or on any registered licensee, and on any subsequent mortgagee of any land, or of any interest in any land, affected by the certificate notwithstanding the expiration, lapsing, cancellation, surrender, suspension, or transfer of the deemed permit to which it relates.
- (5) Without limiting subsection (1), any certificate registered under this section may be transferred by the holder of the deemed permit, or any permit issued in substitution for it, to the person to whom such permit is transferred, by means of a memorandum of transfer to be registered under the provisions of the Land Transfer Act 1952.
- (6) Where any certificate is produced to the Registrar-General of Land under this section, the Registrar-General of Land shall enter on every certificate of title, lease, licence to occupy, provisional register, or other instrument of title registered or filed in the Registrar-General of Land's office and relating to that land, the particulars of the deemed permit, including the file reference.
- (7) Nothing in the Land Transfer Act 1952 shall limit or affect any right, title, or interest held under a deemed permit over land of which the holder of the permit is not the owner before the certificate has been registered and particulars have been entered by the Registrar-General of Land on the instrument of title affected in accordance with subsection (6).
- (8) If the land affected by subsection (1) or any part of it is not subject to the Land Transfer Act 1952, and dealings with the land or part not so subject are not registerable under the Deeds Registration Act 1908, the person in whose favour the right continues may at any time obtain from the relevant regional

council a certificate in terms of subsections (1) and (2), and may lodge a true copy of the certificate in the office of the Chief Surveyor; and the Chief Surveyor shall note the existence of the certificate on the proper plans and records of the land district.

Section 417(1): amended, on 7 July 1993, by section 198(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 417(5): substituted, on 7 July 1993, by section 198(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 417(6): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 417(7): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 417(8): added, on 7 July 1993, by section 198(3) of the Resource Management Amendment Act 1993 (1993 No 65).

### *Existing uses*

#### **417A Uses of lakes and rivers not restricted by section 9**

- (1) Notwithstanding section 374(4), for the purposes of this Act, section 9(3) and (4) do not apply in respect of any activity carried out on the surface of water in any lake or river—
  - (a) unless the activity is specifically referred to, and is controlled or restricted or prohibited by a rule, in a district plan or proposed district plan deemed to be constituted under section 373; or
  - (b) until a district plan or proposed district plan prepared under Schedule 1 provides otherwise.
- (1A) Nothing in subsection (1) shall apply to any commercial activity (being an activity that has, or has the potential to have, as its sole purpose or a related purpose the production of assessable income) carried out in the district of the Queenstown-Lakes District Council.
- (1B) The application of subsection (1) or subsection (1A) may be excluded or modified at any time in accordance with Schedule 1.
- (2) Where any activity is lawfully carried out in any lake or river or on the surface of any lake or river in accordance with a licence or other authorisation granted pursuant to an application



made before 1 October 1991 under any Act, regulation, or bylaw, including an Act, regulation, or bylaw amended, repealed, or revoked by this Act, section 9(3) and (4) shall not apply in respect of that activity to the extent that that activity is permitted by that licence or other authorisation and so long as that licence or other authorisation remains in force.

- (3) Where any activity undertaken in any lake or river or on the surface of any lake or river—
- (a) is authorised by a licence, permit, or authorisation granted pursuant to an application made under any bylaw continued in force by any provision of subsections (1) to (9) of section 424; or
  - (b) is, by virtue of section 424(10), exempt from any provision of any bylaw continued in force by subsections (1) to (9) of section 424,—

section 9(3) and (4) shall not, unless a district plan or a proposed district plan otherwise provides, apply in respect of any such activity to the extent that the activity is permitted by the licence, permit, or authorisation or exempted from the bylaw.

Section 417A: inserted, on 7 July 1993, by section 199 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 417A(1): substituted, on 2 September 1996, by section 22(1) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 417A(1): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 417A(1A): inserted, on 2 September 1996, by section 22(1) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 417A(1B): inserted, on 2 September 1996, by section 22(1) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 417A(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 417A(3): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **418 Certain existing permitted uses may continue**

- (1) For the purposes of this Act, section 15(1)(c) shall not apply in respect of any discharge from any industrial or trade premises which would not have required any licence or other author-

isation under the Clean Air Act 1972, unless a regional plan provides otherwise.

- (1A) Notwithstanding subsection (1), for the purposes of this Act, section 15(1)(c) shall apply to any discharges from industrial or trade premises used for the storage, transfer, treatment, or disposal of waste materials or other waste-management purposes, or for composting organic material, commenced after 1 October 1991.
- (1B) For the purposes of this Act, section 15(1)(d) does not apply in respect of any discharge of a contaminant from any industrial or trade premises which would not have required any licence or other authorisation to discharge contaminants onto or into land under any of the Acts, regulations, or bylaws, or parts thereof, amended, repealed, or revoked by this Act, unless a regional plan provides otherwise.
- (1C) Notwithstanding subsection (1B), for the purposes of this Act, section 15(1)(d) shall apply in respect of any discharges from industrial or trade premises used for the storage, transfer, treatment, or disposal of waste materials or other waste-management purposes, or for composting organic material, where that use of premises is in the nature of a waste-transfer station, land fill, rubbish dump or tip, unless—
  - (a) the discharge is expressly allowed by a rule in a proposed regional plan; or
  - (b) an application for a permit to discharge the contaminant has been lodged with the regional council.
- (2) For the purposes of this Act, section 14(2)(b) and (c) do not apply in respect of any use or taking of geothermal energy for any purpose authorised under section 6 or section 9(1)(b) or section 9(1)(c) of the Geothermal Energy Act 1953 within a region until the third anniversary of the date of commencement of this Act, unless a regional plan for that region sooner provides otherwise.
- (3) For the purposes of this Act, section 13(1) shall not apply in respect of any activity lawfully being carried out in relation to the bed of any river or lake before 1 October 1991 which did not require any licence or other authorisation relating to such activity under any of the Acts, regulations, or bylaws, or

parts thereof, amended, repealed, or revoked by this Act, until a regional plan provides otherwise.

- (3A) For the purposes of this Act (except where section 383A applies), section 13(1) shall not apply in respect of any activity lawfully being carried out in relation to the bed of any river or lake while any licence or other authorisation, granted pursuant to an application made before 1 October 1991, relating to such activity under any of the Acts, regulations, or bylaws, or parts thereof, amended, repealed, or revoked by this Act remains in force, until a regional plan provides otherwise.
- (3B) Notwithstanding section 13(1)(a), any use, erection, reconstruction, placement, alteration, extension, removal, or demolition of any structure or part of any structure in, on, under, or over the bed of any river or lake (whether or not commenced or being carried out) which, before 1 October 1991, could have been lawfully commenced and continued without any licence or other authorisation relating to such activity under any of the Acts, regulations, or bylaws, or parts thereof, amended, repealed, or revoked by this Act, may be continued or commenced at any time after the date of commencement of this Act until a regional plan provides otherwise.
- (3C) For the purposes of this Act, each regional plan under section 368 shall be deemed to include a rule to the effect that every activity described in section 13(1)(a) or (b), in respect of any line defined in section 2(1A) of the Telecommunications Act 1987, is a permitted activity in every case where that activity—
  - (a) will not cause or contribute to the occurrence of—
    - (i) any significant change to the movement of water or sediment in the river or lake; or
    - (ii) any erosion or natural hazard; or
    - (iii) any adverse effect to the bed of the river or lake; and
  - (b) will not adversely affect the carrying out of any other lawful activity in respect of the river or lake.
- (3D) Every rule deemed to be included in a regional plan by subsection (3C) shall apply until a regional plan provides otherwise.
- (4) Without limiting subsection (2), where, immediately before the date of commencement of this Act,—
  - (a) heat or energy from geothermal water; or

- (b) heat or energy from the material surrounding any geothermal water—  
was being lawfully taken or used, and such taking or use did not require any licence, permit, or other authorisation under the Geothermal Energy Act 1953, then, notwithstanding section 14(2)(b) and (c), such taking or use may be continued until a regional plan provides otherwise.
- (5) For the purposes of this Act, where, immediately before the date of commencement of this Act, any person holds any permit or dispensation granted under—
  - (a) a bylaw made under section 149 of the Soil Conservation and Rivers Control Act 1941 (relating to water-courses) or section 150 of that Act (relating to land utilisation); or
  - (b) a bylaw made under section 34A of the Water and Soil Conservation Act 1967 (relating to dam construction); or
  - (c) a bylaw made under section 4 of the Water and Soil Conservation Amendment Act 1973 (relating to bores and underground water)—  
that permit or authorisation shall not be deemed to be a resource consent but that person may, subject to its conditions, continue to undertake the activity authorised by that permit or authorisation within a region until whichever is the sooner of—
    - (d) the date on which a regional plan for that region provides otherwise; or
    - (e) the date on which the permit or authorisation expires.
- (6) Notwithstanding section 12 where, immediately before the date of commencement of this Act,—
  - (a) there is in force—
    - (i) any licence, permit, Order in Council, or approval which is deemed by section 384(1) to be a coastal permit; or
    - (ii) any lease described in section 425(1) ; and
  - (b) any activity was or was proposed to be carried out by or on behalf of the holder of that coastal permit, lease, or licence and such activity could have been lawfully commenced and continued in the coastal marine area

under section 90 or section 102A(1) or section 108 of the Town and Country Planning Act 1977—

such activity may be continued or commenced at any time after the date of commencement of this Act and continued until—

- (c) the expiry of the coastal permit, lease, or licence; or
- (d) where section 124 applies, the determination of any application made for a new coastal permit to replace any such coastal permit, lease, or licence and the determination of any appeals in respect of that application; or
- (e) a rule is included in a regional coastal plan prepared under this Act which provides that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, a non-complying activity, or a prohibited activity—

whichever occurs last.

- (6A) For the purposes of this Act, where, in respect of any mooring existing before 1 October 1991, no licence or permit was held which could be deemed to be a coastal permit under section 384(1), then section 12(2)(a) shall not apply to that mooring until 1 year after a regional coastal plan provides otherwise.
- (6B) For the purposes of this Act, section 12(1) and (2) shall not apply in respect of any activity lawfully being carried out in the coastal marine area, before 1 October 1991, which did not require any licence or other authorisation relating to such activity under any of the Acts, regulations, or bylaws, or parts thereof, amended, repealed, or revoked by this Act, until a regional coastal plan provides otherwise.
- (6C) For the purposes of this Act, section 12(2)(a) shall not apply in respect of the occupation of any warehouse, building, wharf, or other structure in or partly within the coastal marine area under any lease, licence, permit, or other authorisation in force immediately before 1 October 1991, and entered into under section 173(f) of the Harbours Act 1950 (or any former enactment).
- (7) Except as provided in subsection (6), section 12 shall not apply to any activity being carried out on the date of commencement of this Act in the coastal marine area under section 90 or section 102A(1) or section 108 of the Town and Country Planning Act 1977 until the third anniversary of the date of

commencement of this Act, unless a rule in a regional coastal plan prepared under this Act sooner provides that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, a non-complying activity, or a prohibited activity.

- (8) For the purposes of this Act, section 14(2)(a) shall not apply to the activities of ships, boats, and vessels in respect of the operational needs of those craft where, before 1 October 1991, no licence or authorisation was required for those activities under any Act repealed by this Act, until a regional plan provides otherwise.
- (9) For the purposes of this Act, section 14(2)(a) shall not apply in respect of any activity lawfully being carried out in relation to the taking of water from a reservoir for water supply purposes, before 1 October 1991, which did not require any licence or other authorisation relating to such activity under any of the Acts, regulations, or bylaws, or parts thereof, amended, repealed, or revoked by this Act, until the tenth anniversary of the date of commencement of this Act, unless a regional plan sooner provides otherwise.

Section 418(1): substituted, on 2 September 1996, by section 23(1) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 418(1A): substituted, on 2 September 1996, by section 23(1) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 418(1B): substituted, on 17 December 1997, by section 67(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 418(1C): substituted, on 2 September 1996, by section 23(1) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 418(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 418(3): substituted, on 7 July 1993, by section 200(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(3A): inserted, on 7 July 1993, by section 200(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(3B): inserted, on 7 July 1993, by section 200(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(3C): inserted, on 7 July 1993, by section 200(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(3C): amended, on 20 December 2001, pursuant to section 159(8) of the Telecommunications Act 2001 (2001 No 103).

Section 418(3D): inserted, on 7 July 1993, by section 200(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(4): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 418(4): amended, on 7 July 1993, by section 200(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(5)(b): amended, on 7 July 1993, by section 200(4) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(6)(a)(ii): amended, on 1 January 2005, by section 30(1) of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 418(6)(e): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 418(6A): inserted, on 7 July 1993, by section 200(5) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(6A): amended, on 2 September 1996, by section 23(3) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 418(6B): inserted, on 7 July 1993, by section 200(5) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(6C): inserted, on 7 July 1993, by section 200(5) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(7): amended, on 1 August 2003, by section 95 of the Resource Management Amendment Act 2003 (2003 No 23).

Section 418(8): added, on 7 July 1993, by section 200(6) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(8): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 418(9): added, on 7 July 1993, by section 200(6) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 418(9): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

#### **419 Certain discharges affected by water classifications**

**(1) Where—**

- (a) provisions of a final water classification of the kind referred to in section 368(2)(b) are deemed to constitute the provisions of a regional plan under section 368(1) or a regional coastal plan under section 370(1); and
- (b) immediately before the date of commencement of this Act, in respect of any receiving water to which those provisions apply, any discharge of waste within the

meaning of the Water and Soil Conservation Act 1967 was authorised to be continued under section 26K(2) of that Act—

any person so authorised shall, subject to subsection (2), continue to be so authorised for the same period, to the same extent, and subject to the same conditions, pending that person's application for a resource consent to discharge such waste into the receiving water and the determination of any appeals in respect of that application.

- (2) Any person authorised under subsection (1) to continue any discharge of waste shall cease to be so authorised upon the second anniversary of the date of commencement of this Act unless by that anniversary that person has made an application under this Act to the relevant regional council for a resource consent to discharge such waste.
- (3) This section shall apply notwithstanding anything to the contrary in this Act.

#### **420 Designations and requirements continued**

- (1) Where, immediately before the date of commencement of this Act,—
  - (a) a designation is included in an operative district scheme or combined scheme under section 36(8), section 43, or section 118 of the Town and Country Planning Act 1977 or the corresponding provisions of any former enactment; or
  - (b) a requirement has been made under section 118 of that Act, and a territorial authority has an obligation under subsection (9) of that section to include the requirement in a district scheme or combined scheme but has not done so,—the designation or requirement shall, to the extent that it has effect within a coastal marine area, cease to have such effect but shall be deemed to be a coastal permit for the public work or project or work to which the designation or requirement relates which takes effect on the date of commencement of this Act, and the provisions of this Act shall apply accordingly.
- (2) Except as provided in subsection (1), where, immediately before the date of commencement of this Act,—



- (a) a designation is included in an operative district scheme or combined scheme under section 36(8), section 43, or section 118 of the Town and Country Planning Act 1977 or the corresponding provisions of any former enactment, the designation shall be deemed to be a designation included in the relevant district plan under section 175:
- (b) a requirement has been made under section 118 of that Act, and a territorial authority has an obligation under subsection (9) of that section to include the requirement in a district scheme or combined scheme but has not done so, the territorial authority shall, as soon as reasonably practicable and without using the process in Schedule 1, include a designation in respect of that requirement in the relevant district plan in accordance with section 175,—

and the person responsible for the designation shall be deemed to be a requiring authority for that designation; and the provisions of this Act shall apply accordingly.

- (3) For the purposes of section 184 and section 184A, every designation referred to in subsection (2)(a) shall be deemed to have been included in the district plan on the date of commencement of this Act.
- (4) *[Repealed]*
- (5) Where a designation is included in a district plan under subsection (2)(a) or (2)(b) in respect of a project or work that is not a work of a local authority or Minister of the Crown, the designation shall remain in force until the plan is made operative, and shall then lapse unless the person responsible for the project or work has been approved as a requiring authority in respect of that project or work under section 167.
- (5A) All notices given, before the commencement of this subsection, under section 183 by a person deemed to be a requiring authority under subsection (2) are hereby validated and declared to have been lawfully given.
- (6) The person responsible for a project or work referred to in subsection (5) may, in accordance with section 167, apply to the Minister for approval as a requiring authority in respect of that project or work.

- (7) Except as provided in subsection (1), every requirement made under section 43 or section 118 of the Town and Country Planning Act 1977 which, immediately before the date of commencement of this Act, has neither been provided for in the relevant district scheme nor been withdrawn or revoked—
- (a) to the extent that the requirement has effect within the coastal marine area, shall be deemed to be withdrawn:
  - (b) except as provided in paragraph (a), shall be deemed to be a requirement that has been notified under section 168, and section 422 shall apply to it.
- (8) Subsection (7) applies whether or not the requirement is the subject of any proceedings before a territorial authority, the Environment Court, or any other court.

Section 420(2): amended, on 7 July 1993, by section 201(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 420(2)(b): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 420(3): amended, on 17 December 1997, by section 68(1) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 420(4): repealed, on 17 December 1997, by section 68(2) of the Resource Management Amendment Act 1997 (1997 No 104).

Section 420(5): substituted, on 7 July 1993, by section 201(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 420(5A): inserted, on 7 July 1993, by section 201(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 420(8): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

#### **421 Protection notices to become heritage orders**

- (1) The following provisions apply in respect of every protection notice issued under section 36 of the Historic Places Act 1980 which, immediately before the commencement of this Act, is included in an operative district scheme or combined scheme under section 125B(10) of the Town and Country Planning Act 1977, or the corresponding provisions of any former enactment, namely:
- (a) to the extent that the notice has effect within the coastal marine area, the notice shall be deemed to be cancelled:
  - (b) except as provided in paragraph (a), the notice shall be deemed to be a heritage order included in the relevant

district plan, and the provisions of this Act shall apply accordingly.

- (2) The following provisions apply in respect of every protection notice issued under section 36 of the Historic Places Act 1980 which, immediately before the date of commencement of this Act, has not been included in an operative district scheme or combined scheme under section 125B(10) of the Town and Country Planning Act 1977, namely—
- (a) to the extent that the notice has effect within a coastal marine area, the notice shall be deemed to be withdrawn:
  - (b) except as provided in paragraph (a),—
    - (i) in a case where a territorial authority has an obligation under section 125B(10) of that Act to include the notice in an operative district scheme or combined scheme but has not done so, the territorial authority shall, as soon as reasonably practicable and without using the process in Schedule 1, include a heritage order in respect of the notice in the relevant district plan in accordance with section 192:
    - (ii) in any other case, the notice shall be deemed to be a requirement for a heritage order that has been notified under section 189, and section 422 shall apply to it.
- (3) Subsection (2)(a) shall apply whether or not the notice is the subject of any proceedings before a territorial authority, the Environment Court, or any other court.

Section 421(2)(b)(i): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 421(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

#### **422 Procedure for requirements for designations and protection notices**

- (1) This section applies to requirements and notices of the kinds referred to in sections 420(7)(b) and 421(2)(b)(ii).

- (2) Where, before the date of commencement of this Act, a local authority has been notified of or served with a requirement or notice to which this section applies, and on the date of commencement of this Act, any hearing involved in the territorial authority's consideration of the requirement or notice—
- (a) has commenced, the territorial authority shall proceed with that consideration and make its recommendation accordingly as if this Act had not been enacted;
  - (b) has not commenced, the territorial authority shall deal with the requirement or notice as if it were a requirement for a designation or heritage order, as the case may be, and the provisions of this Act shall apply accordingly.
- (3) Except as provided in subsection (2), a territorial authority that has been notified of or served with a requirement or notice to which this section applies shall, as soon as reasonably practicable after the date of commencement of this Act, decide whether the requirement or notice is to be dealt with after that date—
- (a) in accordance with the Town and Country Planning Act 1977; or
  - (b) in accordance with this Act as if the requirement or notice were a requirement for a designation or heritage order, as the case may be; or
  - (c) partly in accordance with that Act and otherwise in accordance with this Act,—
- and any such decision shall be final and not subject to appeal to or review by any court or the Environment Court.
- (4) When making a decision for the purposes of subsection (3), the territorial authority shall comply with any regulations and also shall have regard to any representations made to it by the person who made the requirement or gave the notice, or any other person, as to the appropriate manner of dealing with the requirement or notice.
- (5) Every territorial authority that makes a decision under subsection (3) shall ensure that written notice of—
- (a) the decision; and

- (b) anything that the person who made the requirement or gave the notice is required to do as a result of the decision—  
is served as soon as reasonably practicable after the decision is made on every person (including the person who made the requirement or gave the notice) whom the territorial authority considers should receive notice.
- (6) Any territorial authority's recommendation in respect of a requirement or a notice to which this section applies, made in accordance with this section, and any decision by—
  - (a) a Minister of the Crown or a local authority; or
  - (b) the New Zealand Historic Places Trust constituted under the Historic Places Act 1993—  
in respect of that recommendation, shall have effect according to its tenor notwithstanding that all requirements of this Act in relation to designations and heritage orders and requirements therefor may not have been complied with, and any such decision may be appealed against in accordance with this Act accordingly.
- (7) A person who, if this Act had not been enacted, has a right of appeal under section 118(7) or section 125B(8) of the Town and Country Planning Act 1977 in respect of a decision on a requirement or a protection notice may continue to exercise that right.
- (8) Any appeal to the Environment Court—
  - (a) under section 118(7) of the Town and Country Planning Act 1977 in respect of a decision on a requirement; or
  - (b) under section 125B(8) of that Act in respect of a decision on a protection notice; or
  - (c) under subsection (7)—  
shall be continued and completed—
  - (d) where the appeal has been wholly or partly heard, as if the enactments repealed by this Act continued in force; and
  - (e) in every other case, as if the appeal had been commenced under this Act, which shall apply accordingly.

Section 422(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 422(6)(b): amended, on 1 July 1993, pursuant to section 118(1) of the Historic Places Act 1993 (1993 No 38).

Section 422(8): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

#### **423 National water conservation orders**

- (1) A national water conservation order made under section 20D of the Water and Soil Conservation Act 1967, and in force immediately before the date of commencement of this Act, shall be deemed to be a water conservation order made on the same terms under section 214.
- (2) Where, before the date of commencement of this Act, an application for a water conservation order has been made under section 20A of the Water and Soil Conservation Act 1967, and on the date of commencement of this Act—
  - (a) the application has not been publicly notified under section 20B of that Act, the application shall be deemed to be an application made on that date under section 201, and the provisions of this Act shall apply accordingly; or
  - (b) the application has been publicly notified under section 20B of that Act but, immediately before the date of commencement of this Act, the Minister was still considering the application, the Minister shall, having regard to the progress made in consideration of the application, as soon as reasonably practicable after the date of commencement of this Act, decide whether the application is to be dealt with after that date in accordance with—
    - (i) the provisions of the Water and Soil Conservation Act 1967 as if this Act had not been enacted; or
    - (ii) the provisions of that Act as if this Act had not been enacted, but having regard to the matters set out in sections 199 and 207; or
    - (iii) this Act as if the application had been made under this Act,—and shall ensure that written notice of the decision is served as soon as reasonably practicable on every person (including the applicant) whom the Minister considers should receive notice. Any such decision by the

Minister shall be final and not subject to appeal to, or review by, any court or the Environment Court.

- (3) Any person who, if this Act had not been enacted, would have had a right under section 20C(1) of the Water and Soil Conservation Act 1967 to make submissions on or an objection to a draft national water conservation order under section 20B(7)(a) or any decision under section 20B(7)(c) of that Act may continue to exercise that right.
- (4) All inquiries by the Environment Court under section 20C of the Water and Soil Conservation Act 1967 commenced before the date of commencement of this Act and not completed at that date, and all inquiries initiated by the lodging of submissions and objections and not commenced at that date, and all inquiries in respect of submissions or objections made after the date of commencement of this Act by virtue of subsection (3), shall be continued and completed in all respects as if the Water and Soil Conservation Act 1967 continued in force and this Act had not been enacted.

Section 423(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 423(4): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

### *Miscellaneous provisions*

#### **424 Savings as to bylaws**

- (1) Every bylaw described in section 368(2)(e) that is in force immediately before the date of commencement of this Act shall, so far as it is not inconsistent with this Act, for all purposes be deemed to have been lawfully made by the regional council for the area to which the bylaw relates, and shall continue in force within that area until—
  - (a) the bylaw is publicly notified as a provision of a regional plan for the purposes of section 369(2) in accordance with section 376; or
  - (b) the expiry of 3 years from the date of commencement of this Act—whichever is the earlier, and shall then expire.
- (2) Every bylaw made under the Harbours Act 1950, in respect of any area in the coastal marine area, by—

- (a) any Harbour Board (within the meaning of that Act) relating to any matters specified in paragraphs (4), (7), (34), (34A), (36), (37), (38), (41), (42), and (44) of section 232 of that Act; or
  - (b) any public body (within the meaning of that Act) under section 8A of that Act—  
and that is in force immediately before the date of commencement of this Act shall, so far as it is not inconsistent with this Act, be deemed to have been lawfully made by the regional council for the region to which the bylaw relates and shall continue in force within that area until the expiry of 8 years after the date of commencement of this Act, and shall then expire.
- (3) Every bylaw made under the Harbours Act 1950 in respect of any area that is not within the coastal marine area by—
  - (a) any Harbour Board (within the meaning of that Act) relating to any matters specified in paragraphs (4), (7), (34), (37), (38), (41), (42), and (44) of section 232 of that Act; or
  - (b) any public body (within the meaning of that Act) under section 8A or section 165(2) of that Act—  
and that is in force immediately before the date of commencement of this Act shall, so far as it is not inconsistent with this Act, be deemed to have been lawfully made by the territorial authority for the area to which the bylaw relates and shall continue in force within that area until the expiry of 8 years after the date of commencement of this Act, and shall then expire.
- (4) Except as provided in subsection (3), every bylaw made under section 165 or section 232(36) of the Harbours Act 1950 and that is in force immediately before the date of commencement of this Act shall, so far as it is not inconsistent with this Act, be deemed to have been lawfully made by the regional council for the region to which the bylaw relates and shall continue in force within that area until the expiry of 8 years after the date of commencement of this Act, and shall then expire.
- (5) Subject to subsection (6)—
  - (a) every bylaw referred to in subsections (2) and (4) may from time to time be altered or revoked by the regional council; and



- (b) every bylaw referred to in subsection (3) may from time to time be altered or revoked by the territorial authority—  
for the region or area to which the bylaw relates, in the manner provided in section 681 of the Local Government Act 1974, as if the bylaw had been made by the regional council, or as the case may be, the territorial authority under that Act.
- (6) The alteration under subsection (5) of any bylaw referred to in subsections (2), (3), and (4) shall not come into force until the alteration has been approved by the Minister of Conservation and the Minister of Transport, jointly, by notice in the *Gazette*.
- (7) Sections 233, 234(2), 235, 236, 237, and 239 of the Harbours Act 1950, so far as they are applicable and with all necessary modifications, shall continue to apply to those bylaws referred to in subsections (2), (3), and (4) as if the regional council or, as the case may be, the territorial authority, were the Harbour Board.
- (8) Where, immediately before the date of commencement of this Act, there was in force any bylaw (in this subsection called a **former bylaw**) made pursuant to section 3 of the Lakes District Waterways (Shotover River) Empowering Act 1985, there shall be deemed to be in force, as from the date of commencement of this Act, in substitution for the former bylaw, a new bylaw on the same terms and conditions and with the same force and effect as the former bylaw; and subsections (3) to (7) and (9) and section 427 shall apply to the new bylaw as if that new bylaw were a bylaw made by a public body (within the meaning of the Harbours Act 1950) under the Harbours Act 1950.
- (9) A local authority that has functions, powers, and duties under any bylaw referred to in any of subsections (2), (3), (4), and (8) may, while the bylaw is in existence, transfer any 1 or more of those functions, powers, or duties to another public authority in accordance with section 33.
- (10) The Water Recreation Regulations 1979 and any regulations amending or in substitution for those regulations shall not apply within any area for which a bylaw made under section 232(42) of the Harbours Act 1950 and in force immediately

before the date of commencement of this Act continues to be in force.

- (11) Where a proposed regional coastal plan has been notified and any inconsistencies arise between the provisions of that proposed plan and the bylaws under subsection (2) or subsection (4), the provisions of the proposed regional coastal plan shall prevail.

Section 424(1)(b): amended, on 7 July 1993, by section 202(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 424(2): amended, on 2 September 1996, by section 24(1) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 424(3): amended, on 2 September 1996, by section 24(1) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 424(4): amended, on 2 September 1996, by section 24(1) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 424(8): added, on 7 July 1993, by section 202(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 424(9): added, on 7 July 1993, by section 202(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 424(10): added, on 7 July 1993, by section 202(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 424(11): added, on 7 July 1993, by section 202(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Section 424(11): amended, on 2 September 1996, by section 24(2) of the Resource Management Amendment Act 1996 (1996 No 160).

## **425 Leases, licences, and other authorities under Harbours Act 1950**

- (1) Every lease made under section 154 of the Harbours Act 1950 and in force immediately before the date of commencement of this Act shall, notwithstanding the amendment of that Act by this Act, continue in force after the date of commencement of this Act on the same conditions and with the same effect as if this Act had not been enacted; and all the provisions of that Act relating to any such lease or licence or conferring or imposing any right, power, privilege, function, duty, or liability on any party to any such lease or licence shall continue to apply in respect of that lease or licence accordingly.
- (2) Notwithstanding anything to the contrary in this Act, section 124 shall apply to any lease described in subsection (1) when that lease is due to expire as if every reference in that section

to a resource consent or an original resource consent were a reference to that lease.

- (3) Except as provided in section 384(1)—
- (a) every licence or permit granted under section 146A or section 156 or section 162 or section 165 of the Harbours Act 1950; and
  - (b) every Order in Council made under section 175 of that Act; and
  - (c) every approval granted under section 178(1)(b) or (2) of that Act—
- shall, notwithstanding the amendment of that Act by this Act, continue in force after the date of commencement of this Act on the same conditions and with the same effect as if that Act had not been so amended.
- (4) This section applies subject to section 12 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

Section 425(3)(c): amended, on 7 July 1993, by section 203 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 425(4): added, on 1 January 2005, by section 31 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

#### **425A Functions and powers in respect of activities on or in Lake Taupo**

- (1) Nothing in this Act shall have the effect of giving any local authority any power, duty, function, or control in respect of any activity on or in Lake Taupo where that power, duty, function, or control was exercised, at the date of commencement of this Act, by—
- (a) the Minister of Internal Affairs; or
  - (b) the Minister of Transport; or
  - (c) the Lake Taupo Harbourmaster; or
  - (d) the Secretary for Local Government; or
  - (e) the Secretary for Internal Affairs—
- under any of the enactments referred to in subsection (2).
- (2) The enactments to which subsection (1) applies are as follows:
- (a) the Maori Land Amendment and Maori Land Claims Adjustment Act 1926;
  - (b) the Harbours Act 1950;
  - (c) the Shipping and Seamen Act 1952;

- (d) the General Harbour (Nautical and Miscellaneous) Regulations 1968:
  - (e) the Lake Taupo Regulations 1976:
  - (f) the Water Recreation Regulations 1979:
  - (g) the Shipping (Distress Signals and Prevention of Collisions) Regulations 1988:
  - (h) the Water Recreation (Waikato River Outlet, Lake Taupo) Notice 1983 (*Gazette*, 1983, Vol I, page 177):
  - (i) the Water Recreation (Waikato River Outlet, Lake Taupo) Notice 1983, No 2 (*Gazette*, 1983, Vol III, page 3640):
  - (j) any other regulation or notice made under the Harbours Act 1950 and applying to Lake Taupo.
- (3) For the purposes of this section, **Lake Taupo** has the same meaning as lake in the Lake Taupo Regulations 1976.

Section 425A: inserted, on 7 July 1993, by section 204 of the Resource Management Amendment Act 1993 (1993 No 65).

**426 Leases and licences executed under Marine Farming Act 1971**

*[Repealed]*

Section 426: repealed, on 1 January 2005, by section 32 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**427 Deemed transfer of powers to former public bodies**

- (1) This section shall apply notwithstanding anything to the contrary in section 33 or in any other enactment or rule of law.
- (2) Where, before the date of commencement of this Act,—
  - (a) any public body, or any 2 or more public bodies acting jointly, or any Harbour Board, were exercising any current function, power, or duty in respect of any bylaws conferred by the Harbours Act 1950 or by any Order in Council under section 8A or section 165 of that Act in relation to any part of the coastal marine area; and
  - (b) the public body or public bodies or Harbour Board (as the case may be) were administering any bylaw in force under either of those sections—

then, on the date of commencement of this Act, the relevant regional council shall be deemed to have transferred those func-

tions, powers, and duties that are described in subsection (4) to the public body or public bodies or Harbour Board (as the case may be) for a period commencing on the date of commencement of this Act and ending on 30 June 1992, and the public body or public bodies or Harbour Board (as the case may be) shall be deemed to have accepted the transfer.

- (3) Where, before the date of commencement of this Act,—
- (a) any public body, or any 2 or more public bodies acting jointly, or any Harbour Board, were exercising any current function, power, or duty in respect of any bylaws conferred by the Harbours Act 1950 or by any Order in Council under section 8A or section 165 of that Act in relation to any river or lake; and
  - (b) the public body or public bodies or Harbour Board (as the case may be) were administering any bylaw in force under either of those sections—
- then, on the date of commencement of this Act, the relevant territorial authority shall be deemed to have transferred those functions, powers, and duties that are described in subsection (5) to the public body or public bodies or Harbour Board (as the case may be) for a period commencing on the date of commencement of this Act and ending on 30 June 1992, and the public body or public bodies or Harbour Board (as the case may be) shall be deemed to have accepted the transfer.
- (4) Subject to subsection (8), the regional council shall be deemed to have transferred to the relevant public body, public bodies, or Harbour Board under subsection (2)—
- (a) the full power to do anything under every bylaw referred to in section 424(2) and (4) (except the power to make, alter, or revoke any such bylaw); and
  - (b) the full power and duty to enforce every such bylaw—in the same manner and to the same extent as the relevant public body or public bodies were authorised to do so by Order in Council under section 8A or section 165 of the Harbours Act 1950 or, as the case may be, the relevant Harbour Board was authorised to do so under that Act before that Act was amended by this Act.

- (5) Subject to subsection (8), the relevant territorial authority shall be deemed to have transferred to the relevant public body, public bodies, or Harbour Board under subsection (3)—
- (a) the full power to do anything under every bylaw referred to in section 424(3) (except the power to make, alter, or revoke any such bylaw); and
  - (b) the full power and duty to enforce every such bylaw— in the same manner and to the same extent as the relevant public body or public bodies were authorised to do so by Order in Council under section 8A or section 165 of the Harbours Act 1950 or, as the case may be, the relevant Harbour Board was authorised to do so under that Act before that Act was amended by this Act.
- (6) Where, immediately before the date of commencement of this Act, any combined committee within the meaning of section 40A of the Town and Country Planning Act 1977 was exercising any function, power, or duty in respect of a combined scheme within the meaning of that section, then, on the date of commencement of this Act,—
- (a) the relevant regional council shall be deemed to have transferred to the combined committee all of its functions, powers, and duties in relation to those provisions of the coastal plan deemed to be operative under section 370 that were formerly part of the combined scheme; and
  - (b) the relevant territorial authority shall be deemed to have transferred to the combined committee all of its functions, powers, and duties in relation to those provisions of the district plan deemed to be operative under section 373 that were formerly part of the combined scheme— other than the power to approve any changes to the plan.
- (7) Where, immediately before the date of commencement of this Act,—
- (a) any proposed district scheme, maritime planning scheme, or combined scheme under the Town and Country Planning Act 1977, or change to or variation or review of any such scheme under that Act, has been publicly notified but is not yet operative; and

- (b) any such proposed scheme or change to or variation or review of any such scheme relates solely or in part to the whole or any part of the coastal marine area of a region—

then, subject to subsection (8), in respect of any such proposed scheme, change, variation, or review, or part thereof, on the date of commencement of this Act, the relevant regional council shall be deemed to have transferred all functions, powers, and duties that are described in section 378 other than—

- (c) the approval of the relevant scheme or change; and
- (d) any decision to approve or to withdraw any such scheme or change—

to the territorial authority or combined committee (as the case may be) which, before the date of commencement of this Act, was responsible for such proposed scheme, change, variation, or review (and who shall be deemed to have accepted the transfer), for a period commencing on the date of commencement of this Act and ending on the date such scheme, change, variation, or review is completed and becomes operative in accordance with section 378(1).

- (8) The provisions of section 33, with all necessary modifications, shall apply to every transfer under subsection (2) or subsection (3) or subsection (6) or subsection (7) as if the transfer was made under that section and—
  - (a) in the case of a transfer made under subsection (2)—
    - (i) the regional council shall continue to have the power to change or revoke that transfer; and
    - (ii) the public body, public bodies, or Harbour Board (as the case may be) shall have the power to relinquish the transfer at any time;
  - (b) in the case of a transfer made under subsection (3)—
    - (i) the territorial authority shall continue to have the power to change or revoke that transfer; and
    - (ii) the public body, public bodies, or Harbour Board (as the case may be) shall have the power to relinquish the transfer at any time;
  - (c) in the case of a transfer made under subsection (6)—
    - (i) the regional council shall continue to have the power to change or revoke that transfer so far as

- it relates to any provisions of the regional coastal plan under section 370; and
- (ii) the territorial authority shall continue to have the power to change or revoke that transfer so far as it relates to any provisions of the district plan under section 373; and
  - (iii) the combined committee shall have the power to relinquish the transfer at any time:
- (d) in the case of a transfer made under subsection (7)—
- (i) the regional council shall continue to have the power to change or revoke that transfer; and
  - (ii) the territorial authority shall have the power to relinquish the transfer at any time—
- as if the transfer was made under section 33.
- (9) This section does not limit the powers of the regional council or territorial authority under section 33.
- (10) In this section, **public body** and **public bodies acting jointly**, and **Harbour Board** have the same meanings as in sections 2(1), 8A(12)(a), and 165(10) of the Harbours Act 1950 before the repeal of those sections by this Act.

Section 427(2)(a): amended, on 7 July 1993, by section 206 of the Resource Management Amendment Act 1993 (1993 No 65).

#### **428 Environment Court**

- (1) The person who, immediately before the commencement of this Act, held office as the Principal Environment Judge of the Environment Court shall, as from the commencement of this Act, continue to hold office as such as if his or her appointment was made under section 251.
- (2) Each person who, immediately before the commencement of this Act, held office as an Environment Judge or an alternate Environment Judge of the Environment Court shall, as from the commencement of this Act, continue to hold office as such as if his or her appointment was made under section 250.
- (3) Each person who, immediately before the commencement of this Act, held office as a member (other than an Environment Judge) or a deputy member of the Environment Court shall, as from the commencement of this Act, be deemed to hold office as an Environment Commissioner or, as the case may



be, a Deputy Environment Commissioner of the Environment Court, for the remainder of the term of his or her appointment as if his or her appointment was made under section 254.

Section 428 heading: substituted, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 428(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 428(1): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 428(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 428(2): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 428(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 428(3): amended, on 2 September 1996, pursuant to section 6(2)(b) of the Resource Management Amendment Act 1996 (1996 No 160).

Section 428(3): amended, on 2 September 1996, pursuant to section 6(2)(c) of the Resource Management Amendment Act 1996 (1996 No 160).

**429 Savings as to compensation claims**

Where, immediately before the date of commencement of this Act, any claim for compensation under any enactment repealed by this Act has been or could be made, that claim may be made or continued and enforced in all respects as if this Act had not been enacted.

**430 Savings as to court proceedings**

Except as expressly provided in this Act, nothing in this Act shall affect the rights of any party to any proceedings commenced in any court on or before the commencement of this Act.

**431 Obligation to prepare draft New Zealand coastal policy statement within 1 year**

- (1) The Minister of Conservation shall, in accordance with this Act and within 1 year after the date of commencement of this Act, publicly notify a proposed New Zealand coastal policy statement.

- (2) The Minister of Conservation shall not, if he or she complies with subsection (1), be in breach of section 57 during the period from the date of commencement of this Act until the New Zealand coastal policy statement becomes operative.

Section 431 heading: amended, on 7 July 1993, by section 207 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 431(1): amended, on 7 July 1993, by section 207 of the Resource Management Amendment Act 1993 (1993 No 65).

**432 Obligation to prepare regional policy statements and coastal plans within 2 years**

- (1) Every regional council shall, in accordance with this Act and within 2 years after the date of commencement of this Act, publicly notify a proposed regional policy statement for its region.
- (1A) Every regional council shall, in accordance with this Act, publicly notify, by 1 July 1994, a proposed regional coastal plan or plans for its region.
- (2) A regional council that complies with subsection (1) shall not be in breach of section 60 or section 64, as the case may be, during the period from the date of commencement of this Act until the policy statement or plan becomes operative.

Section 432(1): substituted, on 7 July 1993, by section 208 of the Resource Management Amendment Act 1993 (1993 No 65).

Section 432(1A): inserted, on 7 July 1993, by section 208 of the Resource Management Amendment Act 1993 (1993 No 65).

**433 Collection of water management charges**

All charges fixed by special order made under section 24K of the Water and Soil Conservation Act 1967 in respect of the financial year ending with 30 June 1992 may be collected as if that Act had not been repealed by this Act.

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**Schedule 1** ss 60, 64, 65, 73  
**Preparation, change, and review of policy  
statements and plans**

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## Part 1

### Preparation and change of policy statements and plans by local authorities

#### **1 Time limits**

- (1) *[Repealed]*
- (2) Where any time limit is set in this schedule, a local authority may extend it under section 37.
- (3) Where no time limit is set, section 21 (obligation to avoid unreasonable delay) applies.
- (4) Where, under this schedule, a request for a plan change is to be heard and an application for a resource consent or a requirement for a designation or heritage order has been made in relation to the same proposal, section 102 (joint hearings) and section 103 (combined hearings) may apply.

Schedule 1 clause 1 heading: amended, on 1 October 2009, by section 149(2) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 1(1): repealed, on 1 October 2009, by section 149(3) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 1(4): added, on 7 July 1993, by section 209 of the Resource Management Amendment Act 1993 (1993 No 65).

#### **2 Preparation of proposed policy statement or plan**

- (1) The preparation of a policy statement or plan shall be commenced by the preparation by the local authority concerned, of a proposed policy statement or plan.
- (2) A proposed regional coastal plan must be prepared by the regional council concerned in consultation with—
  - (a) the Minister of Conservation; and
  - (b) iwi authorities of the region; and
  - (c) any customary marine title group in the region.

Schedule 1 clause 2(2): substituted, on 17 January 2005, by section 36(1) of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Schedule 1 clause 2(2)(c): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Part 1—*continued***3 Consultation**

- (1) During the preparation of a proposed policy statement or plan, the local authority concerned shall consult—
  - (a) the Minister for the Environment; and
  - (b) those other Ministers of the Crown who may be affected by the policy statement or plan; and
  - (c) local authorities who may be so affected; and
  - (d) the tangata whenua of the area who may be so affected, through iwi authorities; and
  - (e) any customary marine title group in the area.
- (2) A local authority may consult anyone else during the preparation of a proposed policy statement or plan.
- (3) Without limiting subclauses (1) and (2), a regional council which is preparing a regional coastal plan shall consult—
  - (a) the Minister of Conservation generally as to the content of the plan, and with particular respect to those activities to be described as restricted coastal activities in the proposed plan; and
  - (b) the Minister of Transport in relation to matters to do with navigation and the Minister's functions under Parts 18 to 27 of the Maritime Transport Act 1994; and
  - (c) the Minister of Fisheries in relation to fisheries management, and the management of aquaculture activities.
- (4) In consulting persons for the purposes of subclause (2), a local authority must undertake the consultation in accordance with section 82 of the Local Government Act 2002.

Schedule 1 clause 3(1)(d): amended, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 3(1)(d): amended, on 17 January 2005, by section 36(2) of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

Schedule 1 clause 3(1)(e): substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Schedule 1 clause 3(3)(b): amended, on 20 August 1998, by section 27 of the Resource Management Amendment Act 1994 (1994 No 105).

Schedule 1 clause 3(4): added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Part 1—*continued*

**3A Consultation in relation to policy statements**

- (1) A triennial agreement entered into under section 15(1) of the Local Government Act 2002 must include an agreement on the consultation process to be used by the affected local authorities in the course of—
  - (a) preparing a proposed policy statement or a variation to a proposed policy statement; and
  - (b) preparing a change to a policy statement; and
  - (c) reviewing a policy statement.
- (2) If an agreement on the consultation process required by subclause (1) is not reached by the date prescribed in section 15(1) of the Local Government Act 2002,—
  - (a) subclause (1) ceases to apply to that triennial agreement; and
  - (b) 1 or more of the affected local authorities—
    - (i) must advise the Minister and every affected local authority as soon as is reasonably practicable after the date prescribed in section 15(1) of the Local Government Act 2002; and
    - (ii) may submit the matter to mediation.
- (3) If subclause (2) applies, the parts of the triennial agreement other than the part relating to the consultative process referred to in subclause (1) may be confirmed before—
  - (a) an agreement on the consultative process is reached under subclauses (4) and (5)(a); or
  - (b) the Minister makes a binding determination under subclause (5)(b).
- (4) Mediation must be by a mediator or a mediation process agreed to by the affected local authorities.
- (5) If the matter is not submitted to mediation or if mediation is unsuccessful, the Minister may either—
  - (a) make an appointment under section 25 for the purpose of determining a consultation process to be used in the course of preparing a proposed policy statement or reviewing a policy statement; or
  - (b) make a binding determination as to the consultation process that must be used.

Part 1—*continued*

- (6) The consultative process must form part of the triennial agreement, whether or not the other parts of the triennial agreement have been confirmed, in the event that—
- (a) an agreement is reached under subclause (4) or subclause (5)(a) as to a consultative process, as required by subclause (1); or
  - (b) the Minister makes a binding determination under subclause (5)(b).
- (7) In this clause, **affected local authorities** means—
- (a) the regional council of a region; and
  - (b) every territorial authority whose district is wholly or partly in the region of the regional council.

Schedule 1 clause 3A: inserted, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**3B Consultation with iwi authorities**

For the purposes of clause 3(1)(d), a local authority is to be treated as having consulted with iwi authorities in relation to those whose details are entered in the record kept under section 35A, if the local authority—

- (a) considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and
- (b) establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and
- (c) consults with those iwi authorities; and
- (d) enables those iwi authorities to identify resource management issues of concern to them; and
- (e) indicates how those issues have been or are to be addressed.

Schedule 1 clause 3B: inserted, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**3C Previous consultation under other enactments**

A local authority is not required to comply with clause 3 to the extent that any matter in a proposed policy statement or plan has been the subject of consultation with the same per-



Part 1—*continued*

son, group of persons, or their representative or agent under another enactment within the 36 months preceding public notification of the proposed policy statement or plan that the matter relates to, so long as that person, group of persons, or their representative or agent were advised that the information obtained from that consultation was also to apply in relation to matters under this Act.

Schedule 1 clause 3C: inserted, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 3C: amended, on 1 October 2009, by section 149(4) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**4 Requirements to be inserted prior to notification of proposed district plans**

- (1) Before a territorial authority publicly notifies a district plan under clause 5, it shall, by written request, invite requiring authorities which have a designation in the district that has not lapsed to give written notice to the territorial authority stating whether the requiring authority requires the designation to be included in the proposed plan, with or without modification.
- (2) The written request shall give the requiring authority at least 30 working days to respond, and shall specify the final date for the requiring authority to provide its written notice.
- (3) Where the requiring authority states that a designation is to be included in the proposed plan, with modifications, the requiring authority shall include in its written notice the nature of the modifications, and the reasons for the modifications.
- (4) If the requiring authority fails to notify the territorial authority in accordance with subclause (1), no provision for the designation shall be included in the proposed plan.
- (5) A territorial authority shall include in its proposed plan provision for any designation it receives notice of under this clause, any existing heritage orders, and any requirements for designations and heritage orders to which sections 170 and 192 apply.
- (6) A territorial authority may include in its proposed district plan—

Part 1—*continued*

- (a) any requirement for a designation or heritage order which the territorial authority has responsibility for within its district; and
  - (b) any existing designations or heritage orders, with or without modifications, which the territorial authority has responsibility for within its own district.
- (7) If a territorial authority includes a requirement, or modification of a requirement, in its proposed district plan under subclause (6), it must make available for public inspection all information about the requirement that is required by the prescribed form for the notice of that requirement.
- (8) Nothing in this clause applies where a territorial authority publicly notifies a change or variation to a district plan under clause 5.
- (9) A requiring authority may withdraw a requirement for a designation in accordance with section 168(4) and a heritage protection authority may withdraw a requirement for a heritage order in accordance with section 189(4).
- (10) If a territorial authority receives notice from a requiring authority that a requirement has been withdrawn, the territorial authority must, as soon as reasonably practicable and without using the process in this schedule, amend its proposed district plan accordingly.

Schedule 1 clause 4: substituted, on 7 July 1993, by section 210 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 4(3): amended, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 4(4): amended, on 1 October 2009, by section 149(5) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 4(7): substituted, on 1 October 2009, by section 149(6) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 4(9): added, on 1 August 2003, by section 92(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Schedule 1 clause 4(10): added, on 1 August 2003, by section 92(1) of the Resource Management Amendment Act 2003 (2003 No 23).

Part 1—*continued*

Schedule 1 clause 4(10): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**5 Public notice and provision of document to public bodies**

- (1) A local authority that has prepared a proposed policy statement or plan shall publicly notify it.
- (1A) A territorial authority shall, not earlier than 60 working days before public notification or later than 10 working days after public notification of its plan, either—
  - (a) send a copy of the public notice, and such further information as the territorial authority thinks fit relating to the proposed plan, to every ratepayer for the area of the territorial authority where that person, in the territorial authority's opinion, is likely to be directly affected by the proposed plan; or
  - (b) include the public notice, and such further information as the territorial authority thinks fit relating to the proposed plan, in any publication or circular which is issued or sent to all residential properties and Post Office box addresses located in the affected area—and shall send a copy of the public notice to any other person who, in the territorial authority's opinion, is directly affected by the plan.
- (1B) Notwithstanding subclause (1A), a territorial authority shall ensure that notice is given of any requirement or modification of a designation or heritage order under clause 4 to land owners and occupiers who, in the territorial authority's opinion, are likely to be directly affected.
- (1C) A regional council shall, not earlier than 60 working days before public notification or later than 10 working days after public notification, send a copy of the public notice and such further information as the regional council thinks fit relating to the proposed policy statement or plan to any person who, in the regional council's opinion, is likely to be directly affected by the proposed policy statement or plan.
- (2) Public notice under subclause (1) shall state—

Part 1—*continued*

- (a) where the proposed policy statement or plan may be inspected; and
  - (b) that any person may make a submission on the proposed policy statement or plan; and
  - (c) the process for public participation in the consideration of the proposed policy statement or plan; and
  - (d) the closing date for submissions; and
  - (e) the address for service of the local authority.
- (3) The closing date for submissions—
- (a) shall, in the case of a proposed policy statement or plan, be at least 40 working days after public notification; and
  - (b) shall, in the case of a proposed change or variation to a policy statement or plan, be at least 20 working days after public notification.
- (4) A local authority shall provide 1 copy of its proposed policy statement or plan without charge to—
- (a) the Minister for the Environment; and
  - (b) *[Repealed]*
  - (c) in the case of a regional coastal plan, the Minister of Conservation and the appropriate regional conservator for the Department of Conservation; and
  - (d) in the case of a district plan, the regional council and adjacent local authorities; and
  - (e) in the case of a policy statement or regional plan, constituent territorial authorities, and adjacent regional councils; and
  - (f) the tangata whenua of the area, through iwi authorities.
  - (g) *[Repealed]*
- (5) A local authority shall make any proposed policy statement or plan prepared by it available in every public library in its area and in every other place in its area that it considers appropriate.
- (6) The obligation imposed by subclause (5) is in addition to the local authority's obligations under section 35 (records).

Schedule 1 clause 5(1): substituted, on 7 July 1993, by section 211(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 5(1A): inserted, on 7 July 1993, by section 211(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Part 1—*continued*

Schedule 1 clause 5(1A)(a): amended, on 1 October 2009, by section 149(7) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 5(1A)(a): amended, on 7 July 2004, by section 13 of the Local Government (Rating) Amendment Act 2004 (2004 No 66).

Schedule 1 clause 5(1B): inserted, on 7 July 1993, by section 211(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 5(1C): inserted, on 7 July 1993, by section 211(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 5(3)(b): amended, on 7 July 1993, by section 211(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 5(4)(b): repealed, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 5(4)(f): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Schedule 1 clause 5(4)(f): amended, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 5(4)(g): repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**6 Making of submissions**

- (1) Once a proposed policy statement or plan is publicly notified under clause 5, the persons described in subclauses (2) to (4) may make a submission on it to the relevant local authority.
- (2) The local authority in its own area may make a submission.
- (3) Any other person may make a submission but, if the person could gain an advantage in trade competition through the submission, the person's right to make a submission is limited by subclause (4).
- (4) A person who could gain an advantage in trade competition through the submission may make a submission only if directly affected by an effect of the proposed policy statement or plan that—
  - (a) adversely affects the environment; and
  - (b) does not relate to trade competition or the effects of trade competition.
- (5) A submission must be in the prescribed form.

**Part 1—continued**

Schedule 1 clause 6: substituted, on 1 October 2009, by section 149(8) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**7 Public notice of submissions**

- (1) A local authority must give public notice of—
- (a) the availability of a summary of decisions requested by persons making submissions on a proposed policy statement or plan; and
  - (b) where the summary of decisions and the submissions can be inspected; and
  - (c) the fact that no later than 10 working days after the day on which this public notice is given, the persons described in clause 8(1) may make a further submission on the proposed policy statement or plan; and
  - (d) the date of the last day for making further submissions (as calculated under paragraph (c)); and
  - (e) the limitations on the content and form of a further submission.
- (2) The local authority must serve a copy of the public notice on all persons who made submissions.

Schedule 1 clause 7: substituted, on 1 October 2009, by section 149(8) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**8 Certain persons may make further submissions**

- (1) The following persons may make a further submission, in the prescribed form, on a proposed policy statement or plan to the relevant local authority:
- (a) any person representing a relevant aspect of the public interest; and
  - (b) any person that has an interest in the proposed policy statement or plan greater than the interest that the general public has; and
  - (c) the local authority itself.
- (2) A further submission must be limited to a matter in support of or in opposition to the relevant submission made under clause 6.

Part 1—*continued*

Schedule 1 clause 8: substituted, on 1 October 2009, by section 149(8) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**8A Service of further submissions**

- (1) A person who makes a further submission under clause 8 must serve a copy of it on—
  - (a) the relevant local authority; and
  - (b) the person who made the submission under clause 6 to which the further submission relates.
- (2) The further submission must be served on the person referred to in subclause (1)(b) not later than 5 working days after the day on which the person provides the relevant local authority with the further submission.

Schedule 1 clause 8A: substituted, on 1 October 2009, by section 149(8) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**8AA Resolution of disputes**

- (1) For the purpose of clarifying or facilitating the resolution of any matter relating to a proposed policy statement or plan, a local authority may, if requested or on its own initiative, invite anyone who has made a submission on the proposed policy statement or plan to meet with the local authority or such other person as the local authority thinks appropriate.
- (2) A member of the local authority who attends a meeting under subclause (1) is not disqualified from participating in a decision made under clause 10.
- (3) The local authority may, with the consent of the parties, refer to mediation the issues raised by persons who have made submissions on the proposed plan or policy statement.
- (4) Mediation under subclause (3) must be conducted by an independent mediator.
- (5) The chairperson of the meeting must, as soon as practicable after the end of the meeting, prepare a report that—

Part 1—*continued*

- (a) must identify the matters that are agreed between the local authority and the submitters and those that are not; and
  - (b) may identify—
    - (i) the nature of the evidence that must be called at the hearing by the persons who made submissions;
    - (ii) the order in which that evidence is to be heard;
    - (iii) a proposed timetable for the hearing; but
  - (c) does not include evidence that was presented at the meeting on a without prejudice basis.
- (6) The person who prepared the report must give the report to those persons who attended the meeting and the local authority not later than 5 working days before the hearing.
  - (7) The local authority must have regard to the report in making its decision under clause 10.

Schedule 1 clause 8AA: inserted, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**8B Hearing by local authority**

A local authority shall hold a hearing into submissions on its proposed policy statement or plan, and any requirements notified under clause 4, and give at least 10 working days notice of the dates, times, and place of the hearings to—

- (a) every person who made a submission or further submission, and who requested to be heard (and has not since withdrawn that request); and
- (b) in the case of a district plan, every authority which made a requirement under clause 4.

Schedule 1 clause 8B: inserted, on 7 July 1993, by section 212 of the Resource Management Amendment Act 1993 (1993 No 65).

**8C Hearing not needed**

Where submissions are made but no person indicates they wish to be heard, or the request to be heard is withdrawn, the local authority shall consider the submissions along with the other relevant matters, but shall not be required to hold a hearing.



Part 1—*continued*

Schedule 1 clause 8C: inserted, on 7 July 1993, by section 212 of the Resource Management Amendment Act 1993 (1993 No 65).

**8D Withdrawal of proposed policy statements and plans**

- (1) Where a local authority has initiated the preparation of a policy statement or plan, the local authority may withdraw its proposal to prepare, change, or vary the policy statement or plan at any time—
  - (a) if an appeal has not been made to the Environment Court under clause 14, or the appeal has been withdrawn, before the policy statement or plan is approved by the local authority; or
  - (b) if an appeal has been made to the Environment Court, before the Environment Court hearing commences.
- (2) The local authority shall give public notice of any withdrawal under subclause (1), including the reasons for the withdrawal.

Schedule 1 clause 8D: inserted, on 7 July 1993, by section 212 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 8D(1)(a): substituted, on 1 August 2003, by section 92(2) of the Resource Management Amendment Act 2003 (2003 No 23).

Schedule 1 clause 8D(1)(b): substituted, on 1 August 2003, by section 92(2) of the Resource Management Amendment Act 2003 (2003 No 23).

**9 Recommendations and decisions on requirements**

- (1) The territorial authority shall make and notify its recommendation in respect of any provision included in the proposed district plan under clause 4(5) to the appropriate authority in accordance with section 171 or section 191.
- (2) The territorial authority shall make its decision on provisions included in the proposed district plan under clause 4(6) in accordance with section 168A(3) or section 189A(3), as the case may be.
- (3) Nothing in this clause shall allow the territorial authority to make a recommendation or decision in respect of any existing designations or heritage orders that are included without modification and on which no submissions are received.

Schedule 1 clause 9: substituted, on 7 July 1993, by section 213 of the Resource Management Amendment Act 1993 (1993 No 65).

Part 1—*continued*

Schedule 1 clause 9(3): amended, on 1 August 2003, by section 92(3) of the Resource Management Amendment Act 2003 (2003 No 23).

**10 Decisions on provisions and matters raised in submissions**

- (1) A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.
- (2) The decision—
  - (a) must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to—
    - (i) the provisions of the proposed statement or plan to which they relate; or
    - (ii) the matters to which they relate; and
  - (b) may include—
    - (i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and
    - (ii) any other matter relevant to the proposed statement or plan arising from the submissions.
- (3) To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.
- (4) The local authority must—
  - (a) give its decision no later than 2 years after notifying the proposed policy statement or plan under clause 5; and
  - (b) publicly notify the decision within the same time.
- (5) On and from the date the decision is publicly notified, the proposed policy statement or plan is amended in accordance with the decision.

Schedule 1 clause 10: substituted, on 1 October 2009, by section 149(9) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**11 Notification of decision**

- (1) At the same time as a local authority publicly notifies a decision under clause 10(4)(b), it must serve, on every person who

Part 1—*continued*

made a submission on the proposed policy statement or plan concerned,—

- (a) a copy of the public notice; and
  - (b) a statement of the time within which an appeal may be lodged by the person.
- (2) Where a decision has been made under clause 9(2), the territorial authority, at the same time as it publicly notifies a decision under clause 10(4)(b), must serve a copy of the public notice on landowners and occupiers who, in the territorial authority's opinion, are directly affected by the decision.
- (3) If the local authority serves or provides a copy of the public notice under subclause (1) or (2), it must—
- (a) make a copy of the decision available (whether physically or by electronic means) at all its offices, and all public libraries in the district (if it relates to a district plan) or region (in all other cases); and
  - (b) include with the notice a statement of the places where a copy of the decision is available; and
  - (c) send or provide, on request, a copy of the decision within 3 working days after the request is received.

Schedule 1 clause 11: substituted, on 7 July 1993, by section 214(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 11(1): substituted, on 1 October 2009, by section 149(10) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 11(2): substituted, on 1 October 2009, by section 149(10) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 11(3): added, on 1 August 2003, by section 92(6) of the Resource Management Amendment Act 2003 (2003 No 23).

Schedule 1 clause 11(3): amended, on 1 October 2009, by section 149(11) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

## 12 Record of effect of decisions on provisions other than requirements

*[Repealed]*

Schedule 1 clause 12: repealed, on 7 July 1993, by section 214(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Part 1—*continued***13 Decision of requiring authority or heritage protection authority**

- (1) A requiring authority or heritage protection authority shall notify the territorial authority whether it accepts or rejects its recommendation in whole or in part within 30 working days after the day on which the territorial authority notifies its recommendation under clause 9.
- (2) A requiring authority and a heritage protection authority may modify a requirement if, and only if, that modification is recommended by the territorial authority, or it is not inconsistent with the requirement as notified.
- (3) The territorial authority shall alter the proposed district plan to show the modification or delete the requirement in accordance with the requiring authority's or heritage protection authority's notice.
- (4) The territorial authority shall ensure a notice of decision by the requiring authority or heritage protection authority and a statement of the time within which an appeal may be lodged is served on every person who made a submission on the requirement, and on the land owners and occupiers who are directly affected by the decision, within 15 working days of the territorial authority receiving the decision.
- (5) *[Repealed]*
- (6) If a notice summarising a decision is served, the territorial authority must—
  - (a) make a copy of the decision available (whether physically or by electronic means) at all its offices, and all public libraries in the district; and
  - (b) include with the notice a statement of the places where a copy of the decision is available; and
  - (c) send, or provide, on request, a copy of the decision within 3 working days after the request is received.

Schedule 1 clause 13(1): amended, on 7 July 1993, by section 214(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 13(4): substituted, on 7 July 1993, by section 214(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Part 1—*continued*

Schedule 1 clause 13(4): amended, on 1 August 2003, by section 92(7) of the Resource Management Amendment Act 2003 (2003 No 23).

Schedule 1 clause 13(5): repealed, on 7 July 1993, by section 214(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 13(6): added, on 1 August 2003, by section 92(8) of the Resource Management Amendment Act 2003 (2003 No 23).

**14 Appeals to Environment Court**

- (1) A person who made a submission on a proposed policy statement or plan may appeal to the Environment Court in respect of—
  - (a) a provision included in the proposed policy statement or plan; or
  - (b) a provision that the decision on submissions proposes to include in the policy statement or plan; or
  - (c) a matter excluded from the proposed policy statement or plan; or
  - (d) a provision that the decision on submissions proposes to exclude from the policy statement or plan.
- (2) However, a person may appeal under subclause (1) only if—
  - (a) the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan; and
  - (b) the appeal does not seek the withdrawal of the proposed policy statement or plan as a whole.
- (2A) For the purposes of subclause (2)(b), **proposed plan** does not include a variation or a change.
- (3) The following persons may appeal to the Environment Court against any aspect of a requiring authority's or heritage protection authority's decision:
  - (a) any person who made a submission on the requirement that referred to that matter;
  - (b) the territorial authority.
- (4) Any appeal to the Environment Court under this clause must be in the prescribed form and lodged with the Environment Court within 30 working days of service of the notice of decision of the local authority under clause 11 or service of the

Part 1—*continued*

notice of decision of the requiring authority or heritage protection authority under clause 13, as the case may be.

- (5) The appellant must serve a copy of the notice in the prescribed manner.

Schedule 1 clause 14: substituted, on 1 August 2003, by section 92(9) of the Resource Management Amendment Act 2003 (2003 No 23).

Schedule 1 clause 14(2): substituted, on 1 October 2009, by section 149(12) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 14(2A): inserted, on 1 October 2009, by section 149(12) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**15 Hearing by the Environment Court**

- (1) The Environment Court shall hold a public hearing into any provision or matter referred to it.
- (2) If the Environment Court, in a hearing into any provision of a proposed policy statement or plan (other than a proposed regional coastal plan), directs a local authority under section 293(1), the local authority must comply with the court's directions.
- (3) Where the court hears an appeal against a provision of a proposed regional coastal plan, that appeal is an inquiry and the court—
- (a) shall report its findings to the appellant, the local authority concerned, and the Minister of Conservation; and
  - (b) may include a direction given under section 293(1) to the regional council to make modifications to, deletions from, or additions to, the proposed regional coastal plan.

Schedule 1 clause 15 heading: amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Schedule 1 clause 15(1): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Schedule 1 clause 15(2): substituted, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 15(3): amended, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Part 1—*continued*

Schedule 1 clause 15(3): amended, on 1 August 2003, by section 92(11) of the Resource Management Amendment Act 2003 (2003 No 23).

Schedule 1 clause 15(3): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Schedule 1 clause 15(3)(a): amended, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 15(3)(b): amended, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**16 Amendment of proposed policy statement or plan**

- (1) A local authority must, without using the process in this schedule, make an amendment to its proposed policy statement or plan that is required by section 55(2) or by a direction of the Environment Court under section 293.
- (2) A local authority may make an amendment, without using the process in this schedule, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.
- (3) *[Repealed]*

Schedule 1 clause 16: substituted, on 7 July 1993, by section 215 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 16(1): substituted, on 1 October 2009, by section 149(13) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 16(2): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 16(3): repealed, on 1 October 2009, by section 149(14) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**16A Variation of proposed policy statement or plan**

- (1) A local authority may initiate variations (being alterations other than those under clause 16) to a proposed policy statement or plan, or to a change, at any time before the approval of the policy statement or plan.
- (2) The provisions of this schedule, with all necessary modifications, shall apply to every variation as if it were a change.

Part 1—*continued*

Schedule 1 clause 16A: inserted, on 7 July 1993, by section 215 of the Resource Management Amendment Act 1993 (1993 No 65).

**16B Merger with proposed policy statement or plan**

- (1) Every variation initiated under clause 16A shall be merged in and become part of the proposed policy statement or plan as soon as the variation and the proposed policy statement or plan are both at the same procedural stage; but where the variation includes a provision to be substituted for a provision in the proposed policy statement or plan against which a submission or an appeal has been lodged, that submission or appeal shall be deemed to be a submission or appeal against the variation.
- (2) From the date of public notification of a variation, the proposed policy statement or proposed plan shall have effect as if it had been so varied.
- (3) Subclause (2) does not apply to a proposed policy statement or plan approved under clause 17(1A).

Schedule 1 clause 16B: inserted, on 7 July 1993, by section 215 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 16B(2): added, on 2 September 1996, by section 27 of the Resource Management Amendment Act 1996 (1996 No 160).

Schedule 1 clause 16B(3): added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**17 Final consideration of policy statements and plans other than regional coastal plans**

- (1) A local authority shall approve a proposed policy statement or plan (other than a regional coastal plan) once it has made amendments under clause 16 or variations under clause 16A (if any).
- (1A) However, a local authority may approve a proposed policy statement or plan (other than a regional coastal plan) in respect of which it has initiated a variation.
- (1B) A variation to a proposed policy statement or plan approved under subclause (1A) must be treated as if it were a change to the policy statement or plan unless the variation has merged



Part 1—*continued*

in and become part of the proposed policy statement or plan under clause 16B(1).

- (2) A local authority may approve part of a policy statement or plan, if all submissions or appeals relating to that part have been disposed of.
- (3) Every approval under this clause shall be effected by affixing the seal of the local authority to the proposed policy statement or plan.

Schedule 1 clause 17(1): amended, on 7 July 1993, by section 216(1) of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 17(1A): inserted, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 17(1B): inserted, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 17(2): amended, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 17(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Schedule 1 clause 17(3): substituted, on 7 July 1993, by section 216(2) of the Resource Management Amendment Act 1993 (1993 No 65).

**18 Consideration of a regional coastal plan by regional council**

- (1) A regional council shall adopt a proposed regional coastal plan for reference to the Minister of Conservation once it has made amendments under clause 16 or variations under clause 16A (if any).
- (2) Every adoption of a proposed regional coastal plan under this clause shall be effected by affixing the seal of the regional council to the proposed regional coastal plan.
- (3) As soon as practicable after a regional council adopts a proposed regional coastal plan it shall send the plan to the Minister of Conservation for his or her approval.
- (4) A regional council may adopt part of a proposed regional coastal plan if all submissions or inquiries relating to that part have been disposed of.

Schedule 1 clause 18(1): amended, on 7 July 1993, by section 217(1) of the Resource Management Amendment Act 1993 (1993 No 65).

**Part 1—continued**

Schedule 1 clause 18(2): substituted, on 7 July 1993, by section 217(2) of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 18(3): amended, on 7 July 1993, by section 217(3) of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 18(4): added, on 7 July 1993, by section 217(4) of the Resource Management Amendment Act 1993 (1993 No 65).

**19 Ministerial approval of regional coastal plan**

- (1) Prior to his or her approval of a regional coastal plan, the Minister of Conservation may require the regional council to make any amendments to the plan specified by that Minister.
- (2) The Minister of Conservation may not require a regional council to make an amendment to a regional coastal plan that is in conflict or inconsistent with any direction of the Environment Court, unless the Minister made a submission on the provision concerned when the provision was referred to the court.
- (3) When the Minister of Conservation requires a regional council to make changes under subclause (1), the Minister shall give reasons.
- (3A) If all submissions or inquiries relating to part of a regional coastal plan have been disposed of, the Minister of Conservation may approve that part.
- (4) Every approval of a regional coastal plan under this clause shall be effected by the Minister of Conservation signing the regional coastal plan.

Schedule 1 clause 19(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Schedule 1 clause 19(3A): inserted, on 7 July 1993, by section 218 of the Resource Management Amendment Act 1993 (1993 No 65).

**20 Operative date**

- (1) Subject to subclause (2), an approved policy statement or plan shall become an operative policy statement or plan on a date which is to be publicly notified.
- (2) The local authority shall publicly notify the date on which the policy statement or plan becomes operative at least 5 working days before the date on which it becomes operative.

Part 1—*continued*

- (3) *[Repealed]*
- (4) The local authority shall provide 1 copy of its operative policy statement or plan without charge to—
- (a) the Minister for the Environment; and
  - (b) *[Repealed]*
  - (c) in the case of a regional coastal plan, the Minister of Conservation and the appropriate regional conservator for the Department of Conservation; and
  - (d) in the case of a district plan, the regional council and adjacent territorial authorities; and
  - (e) in the case of a policy statement or regional plan, constituent territorial authorities and adjacent regional councils; and
  - (f) the tangata whenua of the area, through iwi authorities.
  - (g) *[Repealed]*
- (5) The local authority shall provide 1 copy of its operative policy statement or plan to every public library in its area.
- (6) The obligation imposed by subclause (5) is in addition to the local authority's obligations under section 35 (records).

Schedule 1 clause 20(1): substituted, on 7 July 1993, by section 219 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 20(2): substituted, on 7 July 1993, by section 219 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 20(3): repealed, on 7 July 1993, by section 219 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 20(4)(b): repealed, on 1 October 2009, by section 149(15) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 20(4)(f): amended, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

Schedule 1 clause 20(4)(f): amended, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 20(4)(g): repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

**20A Correction of operative policy statement or plan**

A local authority may amend, without using the process in this schedule, an operative policy statement or plan to correct any minor errors.

**Part 1—continued**

Schedule 1 clause 20A: inserted, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 20A: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**Part 2****Requests for changes to policy statements  
and plans of local authorities and requests to  
prepare regional plans**

Schedule 1 Part 2: substituted, on 7 July 1993, by section 220 of the Resource Management Amendment Act 1993 (1993 No 65).

**21 Requests**

- (1) Any person may request a change to a district plan or a regional plan (including a regional coastal plan).
- (2) Any person may request the preparation of a regional plan, other than a regional coastal plan.
- (3) Any Minister of the Crown or any territorial authority in the region may request a change to a policy statement.
- (4) Where a local authority proposes to prepare or change its policy statement or plan, the provisions of this Part shall not apply and the procedure set out in Part 1 shall apply.

Schedule 1 clause 21: substituted, on 7 July 1993, by section 220 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 21(3): amended, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**22 Form of request**

- (1) A request made under clause 21 shall be made to the appropriate local authority in writing and shall explain the purpose of, and reasons for, the proposed plan or change to a policy statement or plan and contain an evaluation under section 32 for any objectives, policies, rules, or other methods proposed.
- (2) Where environmental effects are anticipated, the request shall describe those effects, taking into account the provisions of Schedule 4, in such detail as corresponds with the scale and

Part 2—*continued*

significance of the actual or potential environmental effects anticipated from the implementation of the change, policy statement, or plan.

Schedule 1 clause 22: substituted, on 7 July 1993, by section 220 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 22(1): amended, on 1 August 2003, by section 92(13) of the Resource Management Amendment Act 2003 (2003 No 23).

**23 Further information may be required**

- (1) Where a local authority receives a request from any person under clause 21, it may within 20 working days, by written notice, require that person to provide further information necessary to enable the local authority to better understand—
  - (a) the nature of the request in respect of the effect it will have on the environment, including taking into account the provisions of Schedule 4; or
  - (b) the ways in which any adverse effects may be mitigated; or
  - (c) the benefits and costs, the efficiency and effectiveness, and any possible alternatives to the request; or
  - (d) the nature of any consultation undertaken or required to be undertaken—if such information is appropriate to the scale and significance of the actual or potential environmental effects anticipated from the implementation of the change or plan.
- (2) A local authority, within 15 working days of receiving any information under this clause, may require additional information relating to the request.
- (3) A local authority may, within 20 working days of receiving a request under clause 21, or, if further or additional information is sought under subclause (1) or subclause (2), within 15 working days of receiving that information, commission a report in relation to the request and shall notify the person who made the request that such a report has been commissioned.
- (4) A local authority must specify in writing its reasons for requiring further or additional information or for commissioning a report under this clause.

Part 2—*continued*

- (5) The person who made the request—
- (a) may decline, in writing, to provide the further or additional information or to agree to the commissioning of a report; and
  - (b) may require the local authority to proceed with considering the request.
- (6) To avoid doubt, if the person who made the request declines under subclause (5) to provide the further or additional information, the local authority may at any time reject the request or decide not to approve the plan change requested, if it considers that it has insufficient information to enable it to consider or approve the request.

Schedule 1 clause 23: substituted, on 7 July 1993, by section 220 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 23(4): added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 23(5): added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 23(6): added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**24 Modification of request**

As a result of further or additional information, commissioned reports, or other relevant matters, the local authority may, with the agreement of the person who made the request, modify the request.

Schedule 1 clause 24: substituted, on 7 July 1993, by section 220 of the Resource Management Amendment Act 1993 (1993 No 65).

**25 Local authority to consider request**

- (1) A local authority shall, within 30 working days of—
- (a) receiving a request under clause 21; or
  - (b) receiving all required information or any report which was commissioned under clause 23; or
  - (c) modifying the request under clause 24—
- whichever is the latest, decide under which of subclauses (2), (3), and (4), or a combination of subclauses (2) and (4), the request shall be dealt with.

Part 2—*continued*

- (2) The local authority may either—
  - (a) adopt the request, or part of the request, as if it were a proposed policy statement or plan made by the local authority itself and, if it does so,—
    - (i) the request must be notified in accordance with clause 5 within 4 months of the local authority adopting the request; and
    - (ii) the provisions of Part 1 must apply; and
    - (iii) the request has legal effect once publicly notified; or
  - (b) accept the request, in whole or in part, and proceed to notify the request, or part of the request, under clause 26.
- (2A) Subclause (2)(a)(iii) is subject to section 86B.
- (3) The local authority may decide to deal with the request as if it were an application for a resource consent and the provisions of Part 6 shall apply accordingly.
- (4) The local authority may reject the request in whole or in part, but only on the grounds that—
  - (a) the request or part of the request is frivolous or vexatious; or
  - (b) the substance of the request or part of the request has been considered and given effect to or rejected by the local authority or Environment Court within the last 2 years; or
  - (c) the request or part of the request is not in accordance with sound resource management practice; or
  - (d) the request or part of the request would make the policy statement or plan inconsistent with Part 5; or
  - (e) in the case of a proposed change to a policy statement or plan, the policy statement or plan has been operative for less than 2 years.
- (5) The local authority shall notify the person who made the request, within 10 working days, of its decision under this clause, and the reasons for that decision.

Schedule 1 clause 25: substituted, on 7 July 1993, by section 220 of the Resource Management Amendment Act 1993 (1993 No 65).

**Part 2—continued**

Schedule 1 clause 25(2): substituted, on 17 December 1997, by section 72 of the Resource Management Amendment Act 1997 (1997 No 104).

Schedule 1 clause 25(2)(a)(iii): amended, on 1 October 2009, by section 149(16) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 25(2A): inserted, on 1 October 2009, by section 149(17) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 25(4)(b): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**26 Notification timeframes**

Where a local authority accepts the request or part of the request under clause 25(2)(b)—

- (a) the local authority shall prepare the change to the policy statement or plan in consultation with the person who made the request under clause 21; and
- (b) the local authority shall publicly notify the change or the proposed policy statement or plan—
  - (i) within 4 months of agreeing to accept the request; or
  - (ii) within the period that the Environment Court directs under clause 27.

Schedule 1 clause 26: substituted, on 7 July 1993, by section 220 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 26(b)(i): amended, on 17 December 1997, by section 73 of the Resource Management Amendment Act 1997 (1997 No 104).

Schedule 1 clause 26(b)(ii): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**27 Appeals**

- (1) A person who requests a plan change under clause 21 may appeal to the Environment Court against a decision referred to in subclause (1A) within 15 working days of receiving the decision.
- (1A) The decisions that may be appealed under subclause (1) are decisions—
  - (a) to adopt or accept the request in part only under clause 25(2):



Part 2—*continued*

- (b) to reject the request under clause 23(6):
  - (c) to deal with the request under clause 25(3):
  - (d) to reject the request under clause 25(4) in whole or in part.
- (2) The Environment Court may make such decision on any such appeal as it thinks fit.

Schedule 1 clause 27: substituted, on 7 July 1993, by section 220 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 27(1): substituted, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 27(1A): inserted, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Schedule 1 clause 27(2): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**28 Withdrawal of requests**

- (1) Where any person has made a request under clause 21 that person may withdraw the request at any time before the decision by the local authority under clause 29 is notified.
- (2) Where any local authority has reasonable grounds to consider that a person who made a request under clause 21 no longer wishes to continue with the request, the local authority may send a notice to that person at their last known address.
- (3) A notice sent under subclause (2) shall state that if the person who made the request does not advise the local authority within 30 working days of their wish to continue with the request, the local authority shall deem the request to have been withdrawn.
- (4) If the local authority receives no response to its notice sent under subclause (2), it shall deem the request to have been withdrawn under subclause (1).
- (5) Where notice of withdrawal is given under subclause (1) or is deemed to be given under subclause (4), preparation of the policy statement or plan or change shall cease, unless the local authority determines to proceed with the request itself under this Part.

Part 2—*continued*

- (6) The local authority shall ensure that, within 15 working days of receiving a notice of withdrawal under subclause (1) or deeming it to be withdrawn under subclause (4), public notice of the withdrawal, including the reason for the withdrawal, is given, unless the local authority determines to proceed with the request itself.

Schedule 1 clause 28: substituted, on 7 July 1993, by section 220 of the Resource Management Amendment Act 1993 (1993 No 65).

**29 Procedure under this Part**

- (1) Except as provided in subclauses (1A) to (9), Part 1, with all necessary modifications, shall apply to any plan or change requested under this Part and accepted under clause 25(2)(b).
- (1A) Any person may make a submission but, if the person is a trade competitor of the person who made the request, the person's right to make a submission is limited by subclause (1B).
- (1B) A trade competitor of the person who made the request may make a submission only if directly affected by an effect of the plan or change that—
- (a) adversely affects the environment; and
  - (b) does not relate to trade competition or the effects of trade competition.
- (2) The local authority shall send copies of all submissions on the plan or change to the person who made the request.
- (3) The person who made the request has the right to appear before the local authority under clause 8B.
- (4) After considering a plan or change, the local authority may decline, approve, or approve with modifications, the plan or change, and shall give reasons for its decision.
- (5) In addition to those persons covered by clause 11, the local authority shall serve a copy of its decision on the person who made the request under clause 21.
- (6) The person who made the request, and any person who made submissions on the plan or change, may appeal the decision of the local authority to the Environment Court.

*Part 2—continued*

- (7) Where a plan or change has been appealed to the Environment Court, clauses 14 and 15 shall apply, with all necessary modifications.
- (8) Where a plan or change has been appealed to the Environment Court, the person who made the request under clause 21 has the right to appear before the Environment Court.
- (9) With the agreement of the person who made the request, the local authority may, at any time before its decision on the plan or change, initiate a variation under clause 16A.

Schedule 1 clause 29: added, on 7 July 1993, by section 220 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 1 clause 29(1): amended, on 1 October 2009, by section 149(18) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 29(1A): inserted, on 1 October 2009, by section 149(19) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 29(1B): inserted, on 1 October 2009, by section 149(19) of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 1 clause 29(6): amended, on 1 August 2003, by section 92(14)(a) of the Resource Management Amendment Act 2003 (2003 No 23).

Schedule 1 clause 29(6): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Schedule 1 clause 29(7): amended, on 1 August 2003, by section 92(14)(b) of the Resource Management Amendment Act 2003 (2003 No 23).

Schedule 1 clause 29(7): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

Schedule 1 clause 29(8): amended, on 1 August 2003, by section 92(14)(c) of the Resource Management Amendment Act 2003 (2003 No 23).

Schedule 1 clause 29(8): amended, on 2 September 1996, pursuant to section 6(2)(a) of the Resource Management Amendment Act 1996 (1996 No 160).

**Part 3**

**Incorporation of documents by reference in  
plans and proposed plans**

Schedule 1 Part 3: added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Part 3—*continued***30 Incorporation of documents by reference in plans and proposed plans**

- (1) The following written material may be incorporated by reference in a plan or proposed plan:
- (a) standards, requirements, or recommended practices of international or national organisations;
  - (b) standards, requirements, or recommended practices prescribed in any country or jurisdiction;
  - (c) any other written material that deals with technical matters and is too large or impractical to include in, or print as part of, the plan or proposed plan.
- (2) Material may be incorporated by reference in a plan or proposed plan—
- (a) in whole or in part; and
  - (b) with modifications, additions, or variations specified in the plan or proposed plan.
- (3) Material incorporated by reference in a plan or proposed plan has legal effect as part of the plan or proposed plan.

Schedule 1 clause 30: added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**31 Effect of amendments to, or replacement of, material incorporated by reference in plans and proposed plans**

An amendment to, or replacement of, material incorporated by reference in a plan or proposed plan has legal effect as part of the plan or proposed plan only if—

- (a) a variation that has merged in and become part of the proposed plan under Part 1 states that the amendment or replacement has that effect; or
- (b) an approved change made to the plan under Part 1 states that the amendment or replacement has that effect.

Schedule 1 clause 31: added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Part 3—*continued*

**32 Proof of material incorporated by reference**

- (1) A copy of material incorporated by reference in a plan or proposed plan, including any amendment to, or replacement of, the material (**material**), must be—
  - (a) certified as a correct copy of the material by the local authority; and
  - (b) retained by the local authority.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation in the plan or proposed plan of the material.

Schedule 1 clause 32: added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**33 Effect of expiry of material incorporated by reference**

Material incorporated by reference in a plan or proposed plan that expires or that is revoked or that ceases to have effect ceases to have legal effect as part of the plan or proposed plan only if—

- (a) a variation that has merged in and become part of the proposed plan under Part 1 states that the material ceases to have effect; or
- (b) a change to the plan made and approved under Part 1 states that the material ceases to have effect.

Schedule 1 clause 33: added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**34 Consultation on proposal to incorporate material by reference**

- (1) This clause applies to a proposed plan, a variation of a proposed plan, or a change to a plan—
  - (a) that incorporates material by reference:
  - (b) that states that an amendment to, or replacement of, material incorporated by reference in the proposed plan or plan has legal effect as part of the plan.

Part 3—*continued*

- (2) Before a local authority publicly notifies a proposed plan, a variation of a proposed plan, or a change to a plan under clause 5, the local authority must—
  - (a) make copies of the material proposed to be incorporated by reference or the proposed amendment to, or replacement of, material incorporated by reference (**proposed material**) available for inspection during working hours for a reasonable period at the offices of the local authority; and
  - (b) make copies of the proposed material available for purchase in accordance with section 36 at the offices of the local authority; and
  - (c) give public notice stating that—
    - (i) the proposed material is available for inspection during working hours, the place at which it can be inspected, and the period during which it can be inspected; and
    - (ii) copies of the proposed material can be purchased and the place at which they can be purchased; and
    - (iii) if copies of the material are available under subclause (3), details of how and where it may be obtained or accessed; and
  - (d) allow a reasonable opportunity for persons to comment on the proposal to incorporate the proposed material by reference; and
  - (e) consider any comments they make.
- (3) In addition to the requirements under subclause (2), the local authority may make copies of the proposed material available in any way that the chief executive of the local authority considers appropriate in the circumstances (for example, on an Internet website maintained by or on behalf of the local authority).
- (4) The reference in subclause (2) or subclause (3) to the proposed material includes, if the material is not in an official New Zealand language, an accurate translation in an official New Zealand language of the material.

Part 3—*continued*

- (5) A failure to comply with this clause does not invalidate a plan or proposed plan that incorporates material by reference.

Schedule 1 clause 34: added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

**35 Access to material incorporated by reference**

- (1) The local authority—
- (a) must make the material referred to in subclause (2) (**material**) available for inspection during working hours at the offices of the local authority; and
  - (b) must make copies of the material available for purchase in accordance with section 36 at the offices of the local authority; and
  - (c) may make copies of the material available in any other way that the chief executive of the local authority considers appropriate in the circumstances (for example, on an Internet website maintained by or on behalf of the local authority); and
  - (d) must give public notice stating that—
    - (i) the material is incorporated in the plan or proposed plan; and
    - (ii) the material is available for inspection during working hours free of charge and the place at which it can be inspected; and
    - (iii) copies of the material can be purchased and the place at which they can be purchased; and
    - (iv) if copies of the material are available under paragraph (c), details of how and where it may be obtained or accessed.
- (2) The material referred to in subclause (1) is—
- (a) material incorporated by reference in a plan or proposed plan:
  - (b) any amendment to, or replacement of, that material that is incorporated in the plan or proposed plan or the material referred to in paragraph (a) with the amendments or replacement material incorporated:

Part 3—*continued*

- (c) if the material referred to in paragraph (a) or paragraph (b) is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.

Schedule 1 clause 35: added, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

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## **Schedule 1AA**

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### **Incorporation of documents by reference in national environmental standards, national policy statements, and New Zealand coastal policy statements**

Schedule 1AA: inserted, on 10 August 2005, by section 130 of the Resource Management Amendment Act 2005 (2005 No 87).

#### **1 Incorporation of documents by reference**

- (1) The following written material may be incorporated by reference in a national environmental standard, national policy statement, or New Zealand coastal policy statement:
  - (a) standards, requirements, or recommended practices of international or national organisations:
  - (b) standards, requirements, or recommended practices prescribed in any country or jurisdiction:
  - (c) any other written material that deals with technical matters and is too large or impractical to include in, or print as part of, the national environmental standard, national policy statement, or New Zealand coastal policy statement.
- (2) Material may be incorporated by reference in a national environmental standard, national policy statement, or New Zealand coastal policy statement—
  - (a) in whole or in part; and
  - (b) with modifications, additions, or variations specified in the standard or statement.
- (3) Material incorporated by reference in a national environmental standard, national policy statement, or New Zealand coastal policy statement has legal effect as part of the standard or statement.

Schedule 1AA clause 1: inserted, on 10 August 2005, by section 130 of the Resource Management Amendment Act 2005 (2005 No 87).

#### **2 Effect of amendments to, or replacement of, material incorporated by reference**

- (1) An amendment to, or replacement of, material incorporated by reference in a national environmental standard, national policy statement, or New Zealand coastal policy statement has legal

effect as part of the standard or statement only if the Minister publishes a notice under subclause (2).

- (2) The Minister may publish a notice in the *Gazette* that—
  - (a) states that subclause (1) applies to the national environmental standard, national policy statement, or New Zealand coastal policy statement; and
  - (b) specifies the date on which subclause (1) applies to the standard or statement.
- (3) Subclause (1) does not apply if the national environmental standard, national policy statement, or New Zealand coastal policy statement expressly says that it does not apply.

Schedule 1AA clause 2: inserted, on 10 August 2005, by section 130 of the Resource Management Amendment Act 2005 (2005 No 87).

### **3 Proof of material incorporated by reference**

- (1) A copy of material incorporated by reference in a national environmental standard, national policy statement, or New Zealand coastal policy statement including any amendment to, or replacement of, the material (**material**), must be—
  - (a) certified as a correct copy of the material by the chief executive of the Ministry for the Environment; and
  - (b) retained by the Ministry.
- (2) The production in proceedings of a certified copy of the material is, in the absence of evidence to the contrary, sufficient evidence of the incorporation of the material in the national environmental standard, national policy statement, or New Zealand coastal policy statement.

Schedule 1AA clause 3: inserted, on 10 August 2005, by section 130 of the Resource Management Amendment Act 2005 (2005 No 87).

### **4 Effect of expiry of material incorporated by reference**

- (1) Material incorporated by reference in a national environmental standard, national policy statement, or New Zealand coastal policy statement that expires or that is revoked or that ceases to have effect ceases to have legal effect as part of the standard or statement only if the Minister publishes a notice under subclause (2).
- (2) The Minister may publish a notice in the *Gazette* that—

- (a) states that subclause (1) applies to the national environmental standard, national policy statement, or New Zealand coastal policy statement; and
- (b) specifies the date on which subclause (1) applies to the standard or statement.
- (3) Subclause (1) does not apply if the national environmental standard, national policy statement, or New Zealand coastal policy statement expressly says that it does not apply.

Schedule 1AA clause 4: inserted, on 10 August 2005, by section 130 of the Resource Management Amendment Act 2005 (2005 No 87).

## **5 Access to material incorporated by reference**

- (1) The Ministry for the Environment—
  - (a) must make the material referred to in subclause (2) (**material**) available for inspection during working hours at the offices of the Ministry; and
  - (b) must make copies of the material available for purchase at the offices of the Ministry; and
  - (c) may make copies of the material available in any other way that the chief executive of the Ministry considers appropriate in the circumstances (for example, on an Internet website maintained by the Ministry); and
  - (d) must give public notice stating that—
    - (i) the material is incorporated in the national environmental standard, national policy statement, or New Zealand coastal policy statement; and
    - (ii) the material is available for inspection during working hours free of charge and the place at which it can be inspected; and
    - (iii) copies of the material can be purchased and the place at which they can be purchased; and
    - (iv) if copies of the material are available under paragraph (c), details of how and where it may be obtained or accessed.
- (2) The material referred to in subclause (1) is—
  - (a) material incorporated by reference in a national environmental standard, national policy statement, or New Zealand coastal policy statement:

- (b) any amendment to, or replacement of, that material that is incorporated in the standard or statement or the material referred to in paragraph (a) with the amendments or replacement material incorporated:
- (c) if the material referred to in paragraph (a) or paragraph (b) is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.

Schedule 1AA clause 5: inserted, on 10 August 2005, by section 130 of the Resource Management Amendment Act 2005 (2005 No 87).

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**Schedule 1A**

s 64

**Preparation and change of regional  
coastal plans providing for aquaculture  
activities**

Schedule 1A: inserted, on 1 January 2005, by section 33 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**1 Preparation and change of regional coastal plans  
providing for aquaculture activities**

(1AA) This schedule applies to the preparation of, and changes to, a regional coastal plan to the extent that the plan provides for aquaculture activities.

- (1) Schedule 1 applies, subject to this schedule, to the preparation of, and changes to, a regional coastal plan to the extent that the plan provides for aquaculture activities.
- (2) The provisions of this schedule apply, with all necessary modifications, to a variation to a proposed plan or proposed change of a plan as if it were a change.

Schedule 1A clause 1: inserted, on 1 January 2005, by section 33 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Schedule 1A clause 1(1AA): inserted, on 28 September 2008, by section 13(1) of the Resource Management Amendment Act 2008 (2008 No 95).

**1A Proposed regional coastal plan or proposed change to  
regional coastal plan must not describe certain areas as  
aquaculture management areas**

- (1) A proposed regional coastal plan or a proposed change to a regional coastal plan must not describe an area as an aquaculture management area if the area comprises or includes space—
  - (a) that is subject to an application—
    - (i) to which section 25(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 applies; and
    - (ii) made by a person to whom section 25(2) of that Act applies; and
    - (iii) which has not been determined or withdrawn; or
  - (b) that is, or may be, subject to an application—
    - (i) referred to in section 26(1)(b) of that Act; and

- (ii) made by a person referred to in section 26(1)(a) of that Act; and
  - (iii) where an application has been made, it has not been determined or withdrawn; or
- (c) that is subject to an application to which section 50(2) of that Act applies and the application has not been determined or withdrawn; or
- (d) that was subject to an application to which section 50(2) of that Act applied and—
  - (i) the coastal permit applied for has been granted; and
  - (ii) the coastal permit has not lapsed or been cancelled or surrendered; but
  - (iii) the application for a marine farming permit or spat catching permit referred to in section 50(3) of that Act has not been made or has been made but has not been determined or withdrawn.
- (2) To avoid doubt, subclause (1) does not prevent a proposed regional coastal plan or a proposed change to a regional coastal plan describing as an aquaculture management area an area to which a deemed coastal permit under the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 relates.
- (3) Subclause (1) does not apply to a proposed regional coastal plan or a proposed change to a regional coastal plan if the proposed plan or proposed change has been notified under clause 5 or 26 of Schedule 1 before the commencement of the Resource Management Amendment Act 2008.
- (4) If a proposed regional coastal plan or a proposed change to a regional coastal plan describes an area as an aquaculture management area in breach of subclause (1), then (to avoid doubt)—
  - (a) the area is not, and is not to be treated as, an aquaculture management area; and
  - (b) the breach does not invalidate the rest of the plan to the extent that the rest of the plan is not inconsistent with the area not being an aquaculture management area.

Schedule 1A clause 1A: inserted, on 28 September 2008, by section 13(2) of the Resource Management Amendment Act 2008 (2008 No 95).

**2 Assessment of undue adverse effects on fishing**

- (1) The regional council must not notify a proposed regional coastal plan or a proposed change to a regional coastal plan under clause 5 or 26 of Schedule 1 until—
  - (a) the chief executive of the Ministry of Fisheries has made an aquaculture decision under section 186E of the Fisheries Act 1996 in relation to any area described in the plan as an aquaculture management area; and
  - (b) the regional council has complied with clause 3 of this schedule.
- (2) However, subclause (1) does not apply in relation to an area that is—
  - (a) subject to a deemed coastal permit under section 10, 20, or 21 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; or
  - (b) an aquaculture management area in relation to which a determination has already been made under section 186E of the Fisheries Act 1996 or section 38 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.
- (3) Subclause (2)(b) does not include a determination to which section 186H(1)(d)(ii) of the Fisheries Act 1996 or section 41(1)(d)(ii) of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004 applies, if the proposed regional coastal plan or proposed change to a regional coastal plan proposes to revoke or amend the rule on which the determination was based.

Schedule 1A clause 2: substituted, on 28 September 2008, by section 13(3) of the Resource Management Amendment Act 2008 (2008 No 95).

**3 Effect of assessment**

- (1) If the chief executive of the Ministry of Fisheries makes a reservation about customary or recreational fishing in relation to an aquaculture management area, the regional council must—
  - (a) note the details on the plan; and
  - (b) delete from the aquaculture management area, any areas that the reservation relates to.

- (2) If the chief executive of the Ministry of Fisheries makes a reservation (about commercial fishing) or a determination in relation to an aquaculture management area, the regional council must note the details of the reservation or determination on the plan.
- (3) If the chief executive of the Ministry of Fisheries makes a reservation about commercial fishing relating to fish, aquatic life, or seaweed that is not subject to the quota management system under the Fisheries Act 1996 and that is not listed in Schedule 4C or Schedule 4D of that Act, the regional council must exclude the area that the reservation relates to from the plan.
- (4) If the chief executive of the Ministry of Fisheries makes a reservation relating to commercial fishing, the regional council must note the details of the reservation on the plan, specifying any stocks subject to the quota management system, any stocks or species specified in Schedules 4C or 4D of the Fisheries Act 1996.
- (5) A determination or reservation does not form part of the plan.  
Schedule 1A clause 3: inserted, on 1 January 2005, by section 33 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).  
Schedule 1A clause 3(4): amended, on 28 September 2008, by section 13(4) of the Resource Management Amendment Act 2008 (2008 No 95).

#### **4 Effect of direction under section 165O**

- (1) If an Order in Council is made under section 165O in relation to a proposed regional coastal plan to be notified under clause 5 or clause 26 of Schedule 1, the regional council must amend its proposed regional coastal plan in accordance with the direction and record the details of the direction on the plan.
- (2) Schedule 1 does not apply to an amendment under this clause.
- (3) A direction does not form part of the plan.

Schedule 1A clause 4: inserted, on 1 January 2005, by section 33 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

#### **5 Notification of proposed plan**

The regional council must not notify its proposed regional coastal plan in accordance with clause 5 or clause 26 of Sched-



ule 1 until the period provided for in section 186J of the Fisheries Act 1996 has expired.

Schedule 1A clause 5: inserted, on 1 January 2005, by section 33 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**6 Provision of proposed regional coastal plan to chief executive**

A regional council must provide 1 copy of its proposed regional coastal plan, without charge, to the chief executive of the Ministry of Fisheries.

Schedule 1A clause 6: inserted, on 1 January 2005, by section 33 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

**7 Restriction on decisions affecting aquaculture management areas**

A decision under any of clauses 10, 16, 19, or 29(4) of Schedule 1 must not—

- (a) include an aquaculture management area in a coastal marine area that was not in the proposed regional coastal plan as notified under clause 5 or clause 26 of Schedule 1; or
- (b) alter the boundaries of an aquaculture management area except to reduce the size of the aquaculture management area within those boundaries; or
- (c) amend the rules applicable to the aquaculture management area in a way that changes the character or increases the intensity or scale or the occupation of the aquaculture management area by aquaculture activities in a manner contrary to the determination.

Schedule 1A clause 7: inserted, on 1 January 2005, by section 33 of the Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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**Schedule 2**

ss 62, 67, 75

**Matters that may be provided for in  
policy statements and plans**

*[Repealed]*

Schedule 2: repealed, on 1 August 2003, by section 93 of the Resource Management Amendment Act 2003 (2003 No 23).

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### **Schedule 3**

#### **Water quality classes**

s 69

Note: The standards listed for each class apply after reasonable mixing of any contaminant or water with the receiving water and disregard the effect of any natural perturbations that may affect the water body.

**1 Class AE Water (being water managed for aquatic ecosystem purposes)**

- (1) The natural temperature of the water shall not be changed by more than 3° Celsius.
- (2) The following shall not be allowed if they have an adverse effect on aquatic life:
  - (a) any pH change;
  - (b) any increase in the deposition of matter on the bed of the water body or coastal water;
  - (c) any discharge of a contaminant into the water.
- (3) The concentration of dissolved oxygen shall exceed 80% of saturation concentration.
- (4) There shall be no undesirable biological growths as a result of any discharge of a contaminant into the water.

**2 Class F Water (being water managed for fishery purposes)**

- (1) The natural temperature of the water—
  - (a) shall not be changed by more than 3° Celsius; and
  - (b) shall not exceed 25° Celsius.
- (2) The concentration of dissolved oxygen shall exceed 80% of saturation concentration.
- (3) Fish shall not be rendered unsuitable for human consumption by the presence of contaminants.

**3 Class FS Water (being water managed for fish spawning purposes)**

- (1) The natural temperature of the water shall not be changed by more than 3° Celsius. The temperature of the water shall not adversely affect the spawning of the specified fish species during the spawning season.

- (2) The concentration of dissolved oxygen shall exceed 80% of saturation concentration.
- (3) There shall be no undesirable biological growths as a result of any discharge of a contaminant into the water.

**4 Class SG Water (being water managed for the gathering or cultivating of shellfish for human consumption)**

- (1) The natural temperature of the water shall not be changed by more than 3° Celsius.
- (2) The concentration of dissolved oxygen shall exceed 80% of saturation concentration.
- (3) Aquatic organisms shall not be rendered unsuitable for human consumption by the presence of contaminants.

**5 Class CR Water (being water managed for contact recreation purposes)**

- (1) The visual clarity of the water shall not be so low as to be unsuitable for bathing.
- (2) The water shall not be rendered unsuitable for bathing by the presence of contaminants.
- (3) There shall be no undesirable biological growths as a result of any discharge of a contaminant into the water.

**6 Class WS Water (being water managed for water supply purposes)**

- (1) The pH of surface waters shall be within the range 6.0–9.0 units.
- (2) The concentration of dissolved oxygen in surface waters shall exceed 5 grams per cubic metre.
- (3) The water shall not be rendered unsuitable for treatment (equivalent to coagulation, filtration, and disinfection) for human consumption by the presence of contaminants.
- (4) The water shall not be tainted or contaminated so as to make it unpalatable or unsuitable for consumption by humans after treatment (equivalent to coagulation, filtration, and disinfection), or unsuitable for irrigation.

- (5) There shall be no undesirable biological growths as a result of any discharge of a contaminant into the water.

**7 Class I Water (being water managed for irrigation purposes)**

- (1) The water shall not be tainted or contaminated so as to make it unsuitable for the irrigation of crops growing or likely to be grown in the area to be irrigated.
- (2) There shall be no undesirable biological growths as a result of any discharge of a contaminant into the water.

**8 Class IA Water (being water managed for industrial abstraction)**

- (1) The quality of the water shall not be altered in those characteristics which have a direct bearing upon its suitability for the specified industrial abstraction.
- (2) There shall be no undesirable biological growths as a result of any discharge of a contaminant into the water.

**9 Class NS Water (being water managed in its natural state)**  
The natural quality of the water shall not be altered.

**10 Class A Water (being water managed for aesthetic purposes)**

The quality of the water shall not be altered in those characteristics which have a direct bearing upon the specified aesthetic values.

**11 Class C Water (being water managed for cultural purposes)**

The quality of the water shall not be altered in those characteristics which have a direct bearing upon the specified cultural or spiritual values.

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**Schedule 4**

s 88, Schedule 1

**Assessment of effects on the environment**

Schedule 4 heading: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

**1 Matters that should be included in an assessment of effects on the environment**

Subject to the provisions of any policy statement or plan, an assessment of effects on the environment for the purposes of section 88 should include—

- (a) a description of the proposal:
- (b) where it is likely that an activity will result in any significant adverse effect on the environment, a description of any possible alternative locations or methods for undertaking the activity:
- (c) *[Repealed]*
- (d) an assessment of the actual or potential effect on the environment of the proposed activity:
- (e) where the activity includes the use of hazardous substances and installations, an assessment of any risks to the environment which are likely to arise from such use:
- (f) where the activity includes the discharge of any contaminant, a description of—
  - (i) the nature of the discharge and the sensitivity of the proposed receiving environment to adverse effects; and
  - (ii) any possible alternative methods of discharge, including discharge into any other receiving environment:
- (g) a description of the mitigation measures (safeguards and contingency plans where relevant) to be undertaken to help prevent or reduce the actual or potential effect:
- (h) identification of the persons affected by the proposal, the consultation undertaken, if any, and any response to the views of any person consulted:
- (i) where the scale or significance of the activity's effect are such that monitoring is required, a description of how,

once the proposal is approved, effects will be monitored and by whom.

Schedule 4 clause 1: amended, on 1 August 2003, by section 94(a) of the Resource Management Amendment Act 2003 (2003 No 23).

Schedule 4 clause 1(c): repealed, on 7 July 1993, by section 225 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 4 clause 1(h): substituted, on 10 August 2005, by section 129(2) of the Resource Management Amendment Act 2005 (2005 No 87).

#### 1AA

To avoid doubt, clause 1(h) obliges an applicant to report as to the persons identified as being affected by the proposal, but does not—

- (a) oblige the applicant to consult with any person; or
- (b) create any ground for expecting that the applicant will consult with any person.

Schedule 4 clause 1AA: inserted, on 10 August 2005, by section 129(3) of the Resource Management Amendment Act 2005 (2005 No 87).

#### 1A **Matters to be included in assessment of effects on environment**

An assessment of effects on the environment for the purposes of section 88 must include, in a case where the activity for which a resource consent is sought will, or is likely to, have adverse effects that are more than minor on the exercise of a protected customary right, a description of possible alternative locations or methods for the exercise of the proposed activity (unless written approval for the proposed activity is given by the protected customary rights group).

Schedule 4 clause 1A: substituted, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

#### 2 **Matters that should be considered when preparing an assessment of effects on the environment**

Subject to the provisions of any policy statement or plan, any person preparing an assessment of the effects on the environment should consider the following matters:

- (a) any effect on those in the neighbourhood and, where relevant, the wider community including any socio-economic and cultural effects:

- (b) any physical effect on the locality, including any landscape and visual effects:
  - (c) any effect on ecosystems, including effects on plants or animals and any physical disturbance of habitats in the vicinity:
  - (d) any effect on natural and physical resources having aesthetic, recreational, scientific, historical, spiritual, or cultural, or other special value for present or future generations:
  - (e) any discharge of contaminants into the environment, including any unreasonable emission of noise and options for the treatment and disposal of contaminants:
  - (f) any risk to the neighbourhood, the wider community, or the environment through natural hazards or the use of hazardous substances or hazardous installations.
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**Schedule 5**

s 350

**Provisions applying in respect of the  
Hazards Control Commission**

*[Repealed]*

Schedule 5: repealed, on 2 July 2001, by section 149 of the Hazardous Substances and New Organisms Act 1996 (1996 No 30).

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**Schedule 6**  
**Enactments repealed**

s 361(1)

**Atomic Energy Amendment Act 1957 (1957 No 12) (RS Vol 1, p 199)***Amendment(s) incorporated in the Act(s).***Clean Air Act 1972 (1972 No 31) (RS Vol 24, p 127)****Clean Air Amendment Act 1982 (1982 No 31) (RS Vol 24, p 192)****Clean Air Amendment Act 1986 (1986 No 79) (RS Vol 24, p 195)****Clean Air Amendment Act 1987 (1987 No 22) (RS Vol 24, p 196)****Clean Air Amendment Act 1988 (1988 No 180)  
(RS Vol 24, p 199)****Clutha Development (Clyde Dam) Empowering Act 1982  
(1982 No 20)****Clutha Development (Clyde Dam) Empowering Amendment  
Act 1988 (1988 No 56)****Geothermal Energy Amendment Act 1957 (1957 No 51)  
(Reprinted 1975, Vol 3, p 2035)****Geothermal Energy Amendment Act 1966 (1966 No 50)  
(Reprinted 1975, Vol 3, p 2035)****Geothermal Energy Amendment Act 1973 (1973 No 64)  
(Reprinted 1975, Vol 3, p 2036)****Geothermal Energy Amendment Act 1977 (1977 No 89)****Harbours Amendment Act 1981 (1981 No 72)****Hawke's Bay Rivers Act 1919 (1919 No 22 (L))**

**Hawke's Bay Rivers Amendment Act 1920 (1920 No 3 (L))**

**Hawke's Bay Rivers Amendment Act 1930 (1930 No 16 (L))**

**Hawke's Bay Rivers Amendment Act 1932–33  
(1932–33 No 9 (L))**

**Hawke's Bay Rivers Amendment Act 1933 (1933 No 15 (L))**

**Hawke's Bay Rivers Amendment Act 1934–35  
(1934–35 No 3 (L))**

**Hawke's Bay Rivers Amendment Act 1936 (1936 No 9 (L))**

**Iron and Steel Industry Act 1959 (1959 No 100) (RS Vol 9, p 199)**

**Iron and Steel Industry Amendment Act 1965 (1965 No 130)  
(RS Vol 9, p 187)**

**Kumara Sludge Channel Act 1889 (1889 No 19 (L))**

**Marine Farming Amendment Act 1975 (1975 No 51)  
(RS Vol 22, p 747)**

**Marine Farming Amendment Act 1976 (1976 No 147)  
(RS Vol 22, p 748)**

**Marine Farming Amendment Act 1977 (1977 No 188)  
(RS Vol 22, p 749)**

**Marine Farming Amendment Act 1983 (1983 No 17)  
(RS Vol 22, p 749)**

**Marine Farming Amendment Act 1987 (1987 No 36)  
(RS Vol 22, p 750)**

**Noise Control Act 1982 (1982 No 140)**

**Noise Control Amendment Act 1987 (1987 No 84)**

**Reserves and Other Lands Disposal and Public Bodies  
Empowering Act 1915 (1915 No 68) (RS Vol 11, p 551)***Amendment(s) incorporated in the Act(s).***Reserves and Other Lands Disposal and Public Bodies  
Empowering Act 1917 (1917 No 26) (RS Vol 11, p 552)***Amendment(s) incorporated in the Act(s).***Sand Drift Act 1908 (1908 No 169) (RS Vol 11, p 315)****Statutes Amendment Act 1945 (1945 No 40) (RS Vol 11, p 554)***Amendment(s) incorporated in the Act(s).***Town and Country Planning Act 1977 (1977 No 121)  
(RS Vol 16, p 521)****Town and Country Planning Amendment Act 1980  
(1980 No 167) (RS Vol 16, p 650)****Town and Country Planning Amendment Act 1983  
(1983 No 149) (RS Vol 16, p 653)****Town and Country Planning Amendment Act 1987  
(1987 No 69)****Town and Country Planning Amendment Act 1988  
(1988 No 44)****Town and Country Planning Amendment Act (No 2) 1988  
(1988 No 214)****Waihou and Ohinemuri Rivers Improvement Act 1910  
(1910 No 37 (L)) (Reprinted 1931, Vol 4, p 582)****Waihou and Ohinemuri Rivers Improvement Amendment Act  
1958 (1958 No 101)****Waitohi River Bed Act 1889 (1889 No 15 (L))**

**Water and Soil Conservation Act 1967 (1967 No 135)  
(RS Vol 17, p 783)**

**Water and Soil Conservation Amendment Act 1968  
(1968 No 117) (RS Vol 17, p 856)**

**Water and Soil Conservation Amendment Act 1969  
(1969 No 114) (RS Vol 17, p 857)**

**Water and Soil Conservation Amendment Act 1971  
(1971 No 24) (RS Vol 17, p 857)**

**Water and Soil Conservation Amendment Act (No 2) 1971  
(1971 No 154) (RS Vol 17, p 873)**

**Water and Soil Conservation Amendment Act 1972  
(1972 No 114) (RS Vol 17, p 876)**

**Water and Soil Conservation Amendment Act 1973  
(1973 No 24) (RS Vol 17, p 877)**

**Water and Soil Conservation Amendment Act 1974  
(1974 No 137) (RS Vol 17, p 887)**

**Water and Soil Conservation Amendment Act 1976  
(1976 No 164) (RS Vol 17, p 889)**

**Water and Soil Conservation Amendment Act 1980  
(1980 No 153) (RS Vol 17, p 889)**

**Water and Soil Conservation Amendment Act 1981  
(1981 No 123) (RS Vol 17, p 890)**

**Water and Soil Conservation Amendment Act 1983  
(1983 No 151) (RS Vol 17, p 891)**

**Water and Soil Conservation Amendment Act 1987  
(1987 No 203)**

**Water and Soil Conservation Amendment Act 1988  
(1988 No 47)**

**Water and Soil Conservation Amendment Act 1990  
(1990 No 17)**

**Woodville Borough Drainage Empowering Act 1910  
(1910 No 28 (L))**

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**Schedule 7**

s 361(2)

**Regulations and orders revoked**

**Clean Air Act Schedules Order 1982 (SR 1982/278)**

**Clean Air Act (Smoke) Regulations 1975 (SR 1975/52)**

**Clean Air (Licensing) Regulations 1973 (SR 1973/303)**

**Clean Air (Licensing) Regulations 1973, Amendment No 1  
(SR 1983/45)**

**Clean Air (Licensing) Regulations 1973, Amendment No 2  
(SR 1987/17)**

**Clean Air Zone (Christchurch) Order 1977 (SR 1977/172)**

**Clean Air Zone (Christchurch) Order 1977, Amendment No 1  
(SR 1979/258)**

**Clean Air Zone (Christchurch) Order 1977, Amendment No 2  
(SR 1981/70)**

**Clean Air Zone (Christchurch) Order 1977, Amendment No 3  
(SR 1982/247)**

**Clean Air Zone (Christchurch) Order 1977, Amendment No 4  
(SR 1988/97)**

**Clean Air Zones (Canterbury Region) Order 1984 (SR 1984/81)**

**Clean Air Zones (Canterbury Region) Order 1984, Amendment  
No 1 (SR 1988/98)**

**Soil Conservation Regulations 1945 (SR 1945/32)**

**Town and Country Planning Regulations 1978 (SR 1978/130)**

**Town and Country Planning Regulations 1978, Amendment  
No 1 (SR 1981/104)**

**Town and Country Planning Regulations 1978, Amendment  
No 2 (SR 1988/191)**

**Water and Soil Conservation Regulations 1968 (SR 1968/181)**

**Water and Soil Conservation Regulations 1968, Amendment  
No 1 (SR 1970/56)**

**Water and Soil Conservation Regulations 1968, Amendment  
No 2 (SR 1978/36)**

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**Schedule 8**  
**Enactments amended**

s 362

**Part 1**

**Amendments to Acts**

**Airport Authorities Act 1966 (1966 No 51) (RS Vol 17, p 1)**

*Amendment(s) incorporated in the Act(s).*

**Atomic Energy Act 1945 (1945 No 41) (RS Vol 1, p 189)**

*Amendment(s) incorporated in the Act(s).*

**Conservation Act 1987 (1987 No 65)**

*Amendment(s) incorporated in the Act(s).*

**Conservation Law Reform Act 1990 (1990 No 31)**

*Amendment(s) incorporated in the Act(s).*

**Environment Act 1986 (1986 No 127)**

*Amendment(s) incorporated in the Act(s).*

**Fire Service Act 1975 (1975 No 42)**

*Amendment(s) incorporated in the Act(s).*

**Fisheries Act 1983 (1983 No 14)**

*Amendment(s) incorporated in the Act(s).*

**Forest and Rural Fires Act 1977 (1977 No 52) (RS Vol 23, p 407)**

*Amendment(s) incorporated in the Act(s).*

**Forestry Encouragement Act 1962 (1962 No 20)  
(RS Vol 17, p 213)**

*Amendment(s) incorporated in the Act(s).*

**Gas Act 1982 (1982 No 27)**

*Amendment(s) incorporated in the Act(s).*

Part 1—*continued***Geothermal Energy Act 1953 (1953 No 102)***Amendment(s) incorporated in the Act(s).***Harbours Act 1950 (1950 No 34)***Amendment(s) incorporated in the Act(s).***Historic Places Act 1980 (1980 No 16)***Amendment(s) incorporated in the Act(s).***Housing Act 1955 (1955 No 51) (RS Vol 7, p 297)***Amendment(s) incorporated in the Act(s).***Income Tax Act 1976 (1976 No 65)***Amendment(s) incorporated in the Act(s).***Irrigation Schemes Act 1990 (1990 No 52)***Amendment(s) incorporated in the Act(s).***Lake Wanaka Preservation Act 1973 (1973 No 107)  
(RS Vol 24, p 363)***Amendment(s) incorporated in the Act(s).***Land Act 1948 (1948 No 64)***Amendment(s) incorporated in the Act(s).***Land Drainage Act 1908 (1908 No 96)***Amendment(s) incorporated in the Act(s).***Land Settlement Promotion and Land Acquisition Act 1952  
(1952 No 34)***Amendment(s) incorporated in the Act(s).***Land Transfer Act 1952 (1952 No 52) (RS Vol 22, p 531)***Amendment(s) incorporated in the Act(s).*

Part 1—*continued*

**Legal Aid Act 1969 (1969 No 47)**

*Amendment(s) incorporated in the Act(s).*

**Local Authorities Loans Act 1956 (1956 No 63)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Act 1974 (1974 No 66)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Amendment Act 1978 (1978 No 43)**

*Amendment(s) incorporated in the Act(s).*

**Local Government Official Information and Meetings Act 1987  
(1987 No 174)**

*Amendment(s) incorporated in the Act(s).*

**Maori Affairs Act 1953 (1953 No 94)**

*Amendment(s) incorporated in the Act(s).*

**Marine Farming Act 1971 (1971 No 29)**

*Amendment(s) incorporated in the Act(s).*

**Marine Pollution Act 1974 (1974 No 14)**

*Amendment(s) incorporated in the Act(s).*

**Ministry of Energy (Abolition) Act 1989 (1989 No 140)**

*Amendment(s) incorporated in the Act(s).*

**National Development Act Repeal Act 1986 (1986 No 122)**

*Amendment(s) incorporated in the Act(s).*

**National Parks Act 1980 (1980 No 66)**

*Amendment(s) incorporated in the Act(s).*

Part 1—*continued***New Zealand Railways Corporation Act 1981 (1981 No 119)***Amendment(s) incorporated in the Act(s).***New Zealand Railways Corporation Restructuring Act 1990  
(1990 No 105)***Amendment(s) incorporated in the Act(s).***Official Information Act 1982 (1982 No 156)***Amendment(s) incorporated in the Act(s).***Ombudsmen Act 1975 (1975 No 9)***Amendment(s) incorporated in the Act(s).***Property Law Act 1952 (1952 No 51)***Amendment(s) incorporated in the Act(s).***Public Bodies Leases Act 1969 (1969 No 141)  
(RS Vol 18, p 621)***Amendment(s) incorporated in the Act(s).***Public Finance Act 1989 (1989 No 44)***Amendment(s) incorporated in the Act(s).***Public Works Act 1981 (1981 No 35)***Amendment(s) incorporated in the Act(s).***Rating Powers Act 1988 (1988 No 97)***Amendment(s) incorporated in the Act(s).***Reserves Act 1977 (1977 No 66)***Amendment(s) incorporated in the Act(s).***Reserves and Other Lands Disposal Act 1940 (1940 No 13)***Amendment(s) incorporated in the Act(s).*

Part 1—*continued*

**River Boards Act 1908 (1908 No 165) (RS Vol 10, p 765)**

*Amendment(s) incorporated in the Act(s).*

**Soil Conservation and Rivers Control Act 1941 (1941 No 12)**

*Amendment(s) incorporated in the Act(s).*

**Soil Conservation and Rivers Control Amendment Act 1959  
(1959 No 48)**

*Amendment(s) incorporated in the Act(s).*

**Stamp and Cheque Duties Act 1971 (1971 No 51)**

*Amendment(s) incorporated in the Act(s).*

**State-Owned Enterprises Act 1986 (1986 No 124)**

*Amendment(s) incorporated in the Act(s).*

**Synthetic Fuels Plant (Effluent Disposal) Empowering Act 1983  
(1983 No 38)**

*Amendment(s) incorporated in the Act(s).*

**Tasman Pulp and Paper Company Enabling Act 1954  
(1954 No 83)**

*Amendment(s) incorporated in the Act(s).*

**Transit New Zealand Act 1989 (1989 No 75)**

*Amendment(s) incorporated in the Act(s).*

**Unit Titles Act 1972 (1972 No 15)**

*Amendment(s) incorporated in the Act(s).*

**Valuation of Land Act 1951 (1951 No 19)**

*Amendment(s) incorporated in the Act(s).*

Part 1—*continued*

**Whakatane Paper Mills, Limited, Water-Supply Empowering  
Act 1936 (1936 No 7 (P))**

*Amendment(s) incorporated in the Act(s).*

Part 2

Regulations amended

**Geothermal Energy Regulations 1961 (SR 1961/124)**

*Amendment(s) incorporated in the regulations.*

**Geothermal Energy Regulations 1987 (SR 1987/73)**

*Amendment(s) incorporated in the regulations.*

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**Schedule 9**

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**Special Acts under which local authorities  
and other public bodies exercise functions,  
powers, and duties**

**Ashley River Improvement Act 1925 (1925 No 41)**

**Auckland Metropolitan Drainage Act 1944 (1944 No 8 (L))**

**Auckland Metropolitan Drainage Act 1960 (1960 No 15 (L))**

**Christchurch District Drainage Act 1951 (1951 No 21 (L))**

**Dunedin Waterworks Extension Act 1875 (1875 No 5 (P))**

**Dunedin Waterworks Extension Act 1930 (1930 No 7 (L))**

**Dunedin Waterworks (Silverstream Supply) Extension Act 1945  
(1945 No 6 (L))**

**Dunedin Waterworks (Taieri River Supply) Extension Act 1951  
(1951 No 16 (L))**

**Ellesmere Lands Drainage Act 1905 (1905 No 59)**

**Eltham Borough Drainage and Water Supply Empowering Act  
1905 (1905 No 4 (L))**

**Eltham Drainage Board Act 1914 (1914 No 13 (L))**

**Hawera Borough Drainage Empowering Act 1900  
(1900 No 21 (L))**

**Kaituna River District Act 1926 (1926 No 19 (L))**

**Lake Wanaka Preservation Act 1973 (1973 No 107)**

**Lakes District Waterways Authority (Shotover River)  
Empowering Act 1985 (1985 No 2 (L))**

**Makerua Drainage Board Empowering Act 1952  
(1952 No 8 (L))**

**Makerua Drainage Board Loan Empowering Act 1927  
(1927 No 13 (L))**

**Manawatu-Oroua River District Act 1923 (1923 No 5 (L))**

**North Shore Boroughs (Auckland) Water Conservation Act  
1944 (1944 No 3 (L))**

**North Shore Drainage Act 1963 (1963 No 15 (L))**

**Oxford Road District Act 1905 (1905 No 37 (L))**

**Rangitaiki Land Drainage Act 1956 (1956 No 34)**

**South Canterbury Catchment Board Act 1946 (1946 No 10 (L))**

**South Wairarapa River Board Empowering Act 1931  
(1931 No 4 (L))**

**Southland Land Drainage Act 1935 (1935 No 13 (L))**

**Springs County Council Reclamation and Empowering Act  
1913 (1913 No 10 (L))**

**Springs County Council Reclamation and Empowering Act  
1915 (1915 No 15 (L))**

**Summit Road (Canterbury) Protection Act 1963  
(1963 No 16 (L))**

**Taieri River Improvement Act 1920 (1920 No 20 (L))**

**Taupiri Drainage and River Board Empowering Act 1936  
(1936 No 1 (L))**

**Taupiri Drainage and River District Act 1929 (1929 No 23)**



**Tumu-Kaituna Drainage Board Empowering Act 1928  
(1928 No 16 (L))**

**Waimakariri River Improvement Act 1922 (1922 No 22 (L))**

**Wairau River Board Empowering Act 1934 (1934 No 8 (L))**

**Wanganui River Trust Act 1891 (1891 No 19 (L))**

**Wellington Regional Water Board Act 1972 (1972 No 3 (L))**

Schedule 9 **Dunedin District Drainage and Sewerage Act 1900**: repealed, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Schedule 9 **Dunedin Waterworks Extension Act 1901**: repealed, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Schedule 9 **Hutt River Improvement and Reclamation Act 1922**: repealed, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Schedule 9 **Judea Land Drainage Board Empowering Act 1921**: repealed, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Schedule 9 **Kaikoura River Board Validating Act 1953**: repealed, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Schedule 9 **Lower Clutha River Improvement Act 1938**: repealed, on 16 September 1994, by section 22(1)(c) of the Otago Regional Council (Kuriwao Endowment Lands) Act 1994 (1994 No 4 (L)).

Schedule 9 **Reporoa Drainage Board Empowering Act 1947**: repealed, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Schedule 9 **Te Ore Ore River Board Rating Act 1934**: repealed, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Schedule 9 **Wairau River District Loans Act 1922**: repealed, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

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**Schedule 10**ss 232(2)(a), (4)(a),  
237B(2)(c), 237C(1),  
338(3)(c)**Requirements for instruments creating  
esplanade strips and access strips**

Schedule 10: added, on 7 July 1993, by section 228 of the Resource Management Amendment Act 1993 (1993 No 65).

**1 Prohibitions to be included in instruments**

- (1) Every instrument creating an esplanade strip and every easement for an access strip shall specify that the following acts are prohibited on land over which the esplanade strip or access strip has been created:
- (a) wilfully endangering, disturbing, or annoying any lawful user (including the land owner or occupier) of the strip:
  - (b) wilfully damaging or interfering with any structure adjoining or on the land, including any building, fence, gate, stile, marker, bridge, or notice:
  - (c) wilfully interfering with or disturbing any livestock lawfully permitted on the strip.
- (2) Notwithstanding subclause (1), the prohibitions in paragraphs (b) and (c) shall not apply to the owner or occupier.
- (3) For the purposes of this schedule, **owner** and **occupier** includes any employees or agents authorised by the owner or occupier.

Schedule 10 clause 1: added, on 7 July 1993, by section 228 of the Resource Management Amendment Act 1993 (1993 No 65).

**2 Other prohibitions**

Subject to sections 232(4) and 237B(3), every instrument creating an esplanade strip and every easement for an access strip shall specify that the following acts are prohibited on the land over which the esplanade strip or access strip has been created:

- (a) lighting any fire:
- (b) carrying any firearm:
- (c) discharging or shooting any firearm:
- (d) camping:

- (e) taking any animal on to, or having charge of any animal on, the land:
- (f) taking any vehicle on to, or driving or having charge or control of any vehicle on, the land (whether the vehicle is motorised or non-motorised):
- (g) wilfully damaging or removing any plant (unless acting in accordance with the Biosecurity Act 1993):
- (h) laying any poison or setting any snare or trap (unless acting in accordance with the Biosecurity Act 1993).

Schedule 10 clause 2: added, on 7 July 1993, by section 228 of the Resource Management Amendment Act 1993 (1993 No 65).

Schedule 10 clause 2(g): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Schedule 10 clause 2(h): amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

### **3 Fencing**

The instrument or easement may include any fencing requirements, including gates, stiles, and the repositioning or removal of any fence.

Schedule 10 clause 3: added, on 7 July 1993, by section 228 of the Resource Management Amendment Act 1993 (1993 No 65).

### **4 Access on esplanade strips for conservation purposes**

- (1) Where an esplanade strip is created for the protection of conservation values only, the instrument creating the strip may specify that—
  - (a) no person shall enter or remain on the strip; or
  - (b) only specified persons shall enter or remain on the strip—subject to any other provisions of the instrument.
- (2) Subclause (1) does not apply to the owner or occupier of the land over which the strip is created.

Schedule 10 clause 4: added, on 7 July 1993, by section 228 of the Resource Management Amendment Act 1993 (1993 No 65).

**5 Access on strips for access purposes**

Where an easement for an access strip or an esplanade strip for access purposes is created, the easement or instrument creating the strip shall specify that any person shall have the right, at any time, to pass and repass over and along the land over which the strip has been created, subject to any other provisions of the easement or instrument.

Schedule 10 clause 5: added, on 7 July 1993, by section 228 of the Resource Management Amendment Act 1993 (1993 No 65).

**6 Access on strips created for recreational purposes**

Where an esplanade strip is created for public recreational use, the instrument creating the strip shall specify that any person shall have the right, at any time, to enter upon the land over which the esplanade strip has been created and remain on that land for any period of time for the purpose of recreation, subject to any other provisions of the instrument.

Schedule 10 clause 6: added, on 7 July 1993, by section 228 of the Resource Management Amendment Act 1993 (1993 No 65).

**7 Closure**

- (1) Any instrument creating an esplanade strip or any easement for an access strip may specify that the strip may be closed for any specified period, including particular times and dates.
- (2) Any instrument or easement may specify who is responsible for notifying the public by signs erected at all entry points to the strip, and any other means agreed, that a strip or easement is closed as a result of closure periods specified in the instrument or easement.

Schedule 10 clause 7: added, on 7 July 1993, by section 228 of the Resource Management Amendment Act 1993 (1993 No 65).

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**Schedule 11**  
**Acts that include statutory**  
**acknowledgements**

ss 95E, 274

Schedule 11: added, on 1 October 1998, by section 226 of the Ngāi Tahu Claims Settlement Act 1998 (1998 No 97).

Schedule 11 heading: amended, on 1 October 2009, by section 150 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008

Ngaa Rauru Kītahi Claims Settlement Act 2005

Ngāi Tahu Claims Settlement Act 1998

Ngāti Apa (North Island) Claims Settlement Act 2010

Ngāti Awa Claims Settlement Act 2005

Ngāti Mutunga Claims Settlement Act 2006

Ngati Ruanui Claims Settlement Act 2003

Ngati Tama Claims Settlement Act 2003

Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005

Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika)  
Claims Settlement Act 2009

Pouakani Claims Settlement Act 2000

Te Arawa Lakes Settlement Act 2006

Te Roroa Claims Settlement Act 2008

Te Uri o Hau Claims Settlement Act 2002

Schedule 11 Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008: inserted, on 4 June 2009, by section 48 of the Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (2008 No 98).

Schedule 11 Ngaa Rauru Kītahi Claims Settlement Act 2005: inserted, on 28 June 2005, by section 57 of the Ngaa Rauru Kītahi Claims Settlement Act 2005 (2005 No 84).

Schedule 11 Ngāti Apa (North Island) Claims Settlement Act 2010: inserted, on 16 December 2010, by section 41(2) of the Ngāti Apa (North Island) Claims Settlement Act 2010 (2010 No 129).

Schedule 11 Ngāti Awa Claims Settlement Act 2005: inserted, on 25 March 2005, by section 58 of the Ngāti Awa Claims Settlement Act 2005 (2005 No 28).

Schedule 11 Ngāti Mutunga Claims Settlement Act 2006: inserted, on 22 November 2006, by section 62 of the Ngāti Mutunga Claims Settlement Act 2006 (2006 No 61).

Schedule 11 Ngati Ruanui Claims Settlement Act 2003: inserted, on 6 May 2003, by section 107 of the Ngati Ruanui Claims Settlement Act 2003 (2003 No 20).

Schedule 11 Ngati Tama Claims Settlement Act 2003: inserted, on 26 November 2003, by section 71 of the Ngati Tama Claims Settlement Act 2003 (2003 No 126).

Schedule 11 Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005: inserted, on 24 May 2005, by section 63 of the Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005 (2005 No 72).

Schedule 11 Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009: inserted, on 5 August 2009, by section 36(2) of the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 (2009 No 26).

Schedule 11 Pouakani Claims Settlement Act 2000: added, on 1 March 2001, by section 51 of the Pouakani Claims Settlement Act 2000 (2000 No 90).

Schedule 11 Te Arawa Lakes Settlement Act 2006: inserted, on 26 September 2006, by section 70 of the Te Arawa Lakes Settlement Act 2006 (2006 No 43).

Schedule 11 Te Roroa Claims Settlement Act 2008: inserted, on 30 September 2008, by section 81 of the Te Roroa Claims Settlement Act 2008 (2008 No 100).

Schedule 11 Te Uri o Hau Claims Settlement Act 2002: added, on 18 October 2002, by section 74 of Te Uri o Hau Claims Settlement Act 2002 (2002 No 36).

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**Schedule 12**

ss 17A, 17B

**Adverse effects assessment and report  
and controls in relation to a recognised  
customary activity**

*[Repealed]*

Schedule 12: repealed, on 1 April 2011, by section 128 of the Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3).

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## **Resource Management Amendment Act 2003**

Public Act    2003 No 23  
Date of assent    19 May 2003  
Commencement    see section 2

### **1    Title**

- (1) This Act is the Resource Management Amendment Act 2003.
- (2) In this Act, the Resource Management Act 1991 is called “the principal Act”.

### **2    Commencement**

- (1) Sections 18 to 23 come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on 1 August 2003.

## **Part 2**

### **Amendments and repeals of other enactments, transitional provisions, and savings**

#### **Subpart 3—Transitional and savings provisions**

#### **109    Transitional provisions relating to New Zealand coastal policy statements**

Despite sections 62(3), 67(2), and 75(2) of the principal Act (as substituted by this Act), a regional policy statement or a plan in force on the date of the commencement of this section does not need to give effect to a New Zealand coastal policy statement, but must not be inconsistent with it.

#### **110    Transitional provisions for restricted discretionary activities**

If on the date of commencement of this section a plan or proposed plan includes any rule specifying an activity as a discretionary activity and restricting any discretion under section 68(3B) or section 76(3B) of the principal Act, an application



for that activity must be treated as an application for a restricted discretionary activity.

**111 Transitional provisions for certain rules**

Despite sections 68(5)(e) and 76(4)(e) of the principal Act (as repealed and substituted by this Act), a rule included in accordance with those provisions before the commencement of this section is to be treated as if those provisions had not been repealed and substituted.

**112 Continuation and completion of matters under principal Act**

- (1) If, before the commencement of this section,—
- (a) an application has been made for a resource consent or for any matter in relation to a resource consent (including a change or review of conditions of an existing consent); or
  - (b) a notice of requirement has been given for a designation or a heritage order; or
  - (c) an application has been made to become a requiring authority or a heritage protection authority; or
  - (d) a policy statement, plan, change, or variation has been publicly notified,—
- the continuation and completion of that matter (including any rights of appeal) must be in accordance with the principal Act as if this Act had not been enacted.
- (2) If, before the commencement of this section, an appeal has been lodged or an objection made, the continuation and completion of that appeal or objection must be in accordance with the principal Act as if this Act had not been enacted.
- (3) If, before the commencement of this section, an application for a subdivision consent has been made, the continuation and completion of all proceedings in relation to that subdivision, including the approval and deposit of a survey plan, must be in accordance with the principal Act as if this Act had not been enacted.
- (4) If, before the commencement of this section, a declaration, enforcement, or abatement action under Part 12 of the principal Act had commenced, the continuation and completion of that

action (including any appeals) must be in accordance with the principal Act as if this section had not been enacted.

- (5) If, before the commencement of this section, a notice of appeal or notice of inquiry has been lodged with the Environment Court, sections 271A and 274 of the principal Act apply as if section 271A had not been repealed, and section 274 had not been repealed and substituted, by this Act.
- (6) For the purposes of this section, an appeal includes a reference to, or an inquiry by, the Environment Court.

**113 Exercise of authority granted under Historic Places Act 1993**

- (1) An authority given under section 9F, section 9H, or section 9L of the Historic Places Act 1954, or section 44, section 46, or section 48 of the Historic Places Act 1980 that has not been wholly or partially exercised on or before the date of commencement of this section lapses.
  - (2) An authority given under section 9F, section 9H, or section 9L of the Historic Places Act 1954, or section 44, section 46, or section 48 of the Historic Places Act 1980 that has been partially exercised at the date of commencement of this section may continue to be exercised for a period of 2 years from the date of commencement of this section.
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## **Resource Management (Energy and Climate Change) Amendment Act 2004**

Public Act    2004 No 2  
Date of assent    1 March 2004  
Commencement    see section 2

### **1    Title**

- (1) This Act is the Resource Management (Energy and Climate Change) Amendment Act 2004.
- (2) In this Act, the Resource Management Act 1991 is called “the principal Act”.

### **Part 1**

#### **Preliminary provisions**

### **2    Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

### **Part 2**

#### **Amendments to principal Act and transitional provisions**

### **8    Transitional provision relating to applications made before commencement of Act**

- (1) The matters referred to in subsection (2) must be continued and completed in all respects in accordance with the principal Act as if this Act had not been enacted.
- (2) Subsection (1) applies to the following matters, if made or given before the commencement of this Act:
  - (a) an application for a resource consent:
  - (b) a notice of requirement for a designation.
- (3) For the purposes of subsection (1), an application is made, or a notice is given, on the day on which the local authority receives the application, or the notice is given, in accordance with the requirements of the principal Act.

**9 Transitional provision relating to rules made before  
commencement of Act**

On the commencement of this Act, an existing rule or part of a rule in a regional plan that controls the discharge into air of greenhouse gases solely for its effects on climate change is revoked.

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## **Resource Management (Foreshore and Seabed) Amendment Act 2004**

Public Act    2004 No 94  
Date of assent    24 November 2004  
Commencement    see section 2

### **1    Title**

- (1) This Act is the Resource Management (Foreshore and Seabed) Amendment Act 2004.
- (2) In this Act, the Resource Management Act 1991 is called “the principal Act”.

### **2    Commencement**

- (1) This section and sections 3, 13, 27, 28, 33, 34, 35, 42, and 43 come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on 17 January 2005.

### **40    Continuation and completion of applications, etc, under principal Act**

- (1) This section applies if, before 17 January 2005,—
  - (a) an application has been made for a resource consent or for any matter in relation to a resource consent (including a change or review of conditions of an existing consent); or
  - (b) a policy statement, plan, change, or variation has been publicly notified.
- (2) The continuation and completion of a matter referred to in subsection (1) must be in accordance with the principal Act as if this Act had not been enacted.
- (3) However, a submission, request, or application made under section 85B(1) in relation to a rule in a plan or a proposed plan must be undertaken in accordance with the principal Act as amended by this Act.

**41 Continuation and completion of appeals, etc, under principal Act**

- (1) If, before the commencement of this section, an appeal has been lodged or an objection made, the continuation and completion of that appeal or objection must be in accordance with the principal Act as if this Act had not been enacted.
- (2) However, an appeal lodged after 17 January 2005 must be determined in accordance with the principal Act as amended by this Act.
- (3) If, before 17 January 2005, an application for a subdivision consent has been made, the continuation and completion of all proceedings in relation to that subdivision, including the approval and deposit of a survey plan, must be in accordance with the principal Act as if this Act had not been enacted.
- (4) If, before 17 January 2005, a declaration, enforcement, or abatement action under Part 12 of the principal Act has been commenced, the continuation and completion of that action (including any appeals) must be in accordance with the principal Act as if this Act had not been enacted.

**42 Coastal permits relating to public foreshore and seabed**

- (1) In this section and section 43, **authorisation** includes, but is not limited to, a leasehold interest in, or a licence to occupy, a specified area of the public foreshore and seabed.
- (2) This section and section 43 apply to an activity that is lawfully carried out on or in relation to land in the coastal marine area that,—
  - (a) before the commencement of section 13(1) of the Foreshore and Seabed Act 2004, was not—
    - (i) land of the Crown; or
    - (ii) land vested in a regional council; but
  - (b) after the commencement of section 13(1) of the Foreshore and Seabed Act 2004, is vested in the Crown by that section.
- (3) If an activity is carried out under an authorisation granted by the relevant local authority, as the land owner, to occupy land in, or remove sand, shingle, shell, or other natural material from, the public foreshore and seabed,—

- (a) the authorisation must be treated as a coastal permit for the activity granted under the principal Act; and
  - (b) the same terms and conditions apply as applied under the authorisation; and
  - (c) the provisions of the principal Act apply.
- (4) Despite section 17 of the Foreshore and Seabed Act 2004, a right of renewal under an authorisation referred to in subsection (3) does not apply.

**43 Activities carried out without authorisation**

If an activity that involves an occupation of land in, or the removal of sand, shingle, shell, or other natural material from, the public foreshore and seabed is being carried out without an authorisation granted by the relevant local authority, as the land owner, section 12(2) of the principal Act does not apply until 1 January 2008.

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## Aquaculture Reform (Repeals and Transitional Provisions) Act 2004

Public Act    2004 No 109  
Date of assent    21 December 2004  
Commencement    see section 2

### 1 Title

This Act is the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

### 2 Commencement

- (1) Section 33 comes into force on a date to be appointed by the Governor-General by Order in Council.
- (2) The rest of this Act come into force on 1 January 2005.

*Transitional provisions relating to end of  
moratorium under Resource Management Act  
1991*

### 34 Resource Management Act 1991 called principal Act in sections 35 to 54

In sections 35 to 54, the Resource Management Act 1991 is called “the principal Act”.

*Interim aquaculture management areas*

### 35 Interpretation

In sections 36 to 54,—

**aquaculture decision** means a determination or reservation

**chief executive** means the chief executive of the Ministry of Fisheries

**determination**, in relation to an interim aquaculture management area, means a decision by the chief executive that he or she is satisfied that the interim aquaculture management area will not have an undue adverse effect on fishing or on the sustainability of fisheries resources



**interim aquaculture management area—**

- (a) means a coastal marine area described in an Order in Council made under section 150C of the principal Act or section 36 of this Act; but
- (b) does not include a coastal marine area described in paragraph (a) if the area is an aquaculture management area under section 44 of this Act

**reservation**, in relation to an interim aquaculture management area, means a decision by the chief executive that he or she is not satisfied that the interim aquaculture management area will not have an undue adverse effect on fishing or on the sustainability of fisheries resources.

**36 Interim aquaculture management areas declared by Order in Council**

- (1) The Governor-General may, by Order in Council made on the recommendation of the Minister of Conservation, declare a coastal marine area described in the order to be an interim aquaculture management area.
- (2) The Minister must not make a recommendation unless—
  - (a) the regional council concerned has requested the Minister to make the recommendation; and
  - (b) a regional coastal plan or proposed regional coastal plan—
    - (i) has, before the commencement of this Act, been notified under clause 5 of Schedule 1 of the principal Act; and
    - (ii) applies to the coastal marine area to be described in the Order in Council; and
  - (c) the Minister is satisfied that he or she has received adequate information to base a recommendation on; and
  - (d) the Minister is satisfied that—
    - (i) the regional coastal plan or the proposed regional coastal plan provides for aquaculture activities as a controlled or restricted discretionary or discretionary or non-complying activity in the area that the request relates to; and
    - (ii) the provisions of the plan or proposed plan adequately address the adverse effects (including

cumulative effects) on the environment (other than fisheries resources) of the occupation of a coastal area and of aquaculture activities.

- (3) The Minister must make a recommendation under subsection (1) within 3 months after receiving a request if the Minister is not prevented by subsection (2) from making the recommendation.
- (4) For the purposes of subsection (3), section 37 of the principal Act applies, with all necessary modifications, as if the Minister were acting as a consent authority.

**37 Application for aquaculture decision in relation to interim aquaculture management area**

- (1) A regional council may request the chief executive to make an aquaculture decision in relation to an interim aquaculture management area.
- (2) However, a regional council must not make a request in relation to an area to which section 39(a), (b), or (c) applies.

**38 Chief executive to make aquaculture decision**

- (1) Within 6 months after receiving a request for an aquaculture decision under section 37, the chief executive must—
  - (a) make a determination; or
  - (b) make a reservation; or
  - (c) make 1 or more determinations or reservations or both in relation to different parts of the area.
- (2) The chief executive may request the regional council that requested the aquaculture decision and any person whose interests may be affected to provide him or her with further information about the effects that the interim aquaculture management area would have on access to or displacement of fishing or the sustainability of fisheries resources.
- (3) For the purposes of subsection (1), the period beginning on the day when a request for further information is made and ending on the day when the information is provided is excluded from the 6-month period referred to in subsection (1).
- (4) Before making an aquaculture decision, the chief executive must—

- (a) consult the persons and organisations that the chief executive considers represent the classes of persons having a customary, commercial, or recreational fishing interest in the interim aquaculture management area; and
- (b) consider any submissions made by those persons and organisations.

**39 Aquaculture decisions must not be made in relation to certain areas**

- (1) The chief executive must not make an aquaculture decision if the decision would apply to an area for which—
  - (a) a coastal permit under the principal Act authorises occupation for the purposes of an aquaculture activity; or
  - (b) a deemed coastal permit under section 10 or section 20 or section 21 is in force; or
  - (c) an application for a coastal permit under the principal Act to occupy a coastal marine area for the purpose of an aquaculture activity has been made but not determined.
- (2) However, subsection (1)(c) does not apply to the following applications:
  - (a) applications to which section 150B(2) of the principal Act applies;
  - (b) applications made in the period beginning on 1 January 2005 and ending with the close of 9 May 2006.

Section 39(1)(c): amended, on 28 September 2008, by section 4(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

Section 39(2): added, on 28 September 2008, by section 4(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

**40 Matters to be considered by chief executive**

In deciding whether to make a determination or reservation, the chief executive must have regard only to the following matters:

- (a) the effect of the interim aquaculture management area on—
  - (i) the biological diversity of the aquatic environment:

- (ii) the productivity and biological abundance of fisheries resources:
  - (iii) habitats of known significance for fisheries management:
- (b) the location of the interim aquaculture management area in relation to areas in which fishing is carried out:
- (c) the effect of the interim aquaculture management area on fishing of any fishery, including the proportion of any fishery likely to become affected:
- (d) the degree to which aquaculture activities within the interim aquaculture management area will lead to the exclusion of fishing:
- (e) the extent to which fishing for a species in the interim aquaculture management area can be carried out in other areas:
- (f) the extent to which the interim aquaculture management area will increase the cost of fishing:
- (g) the cumulative effect on fishing of any previous aquaculture activities.

#### **41 Requirements for aquaculture decision**

- (1) An aquaculture decision must—
  - (a) be in writing; and
  - (b) define the areas that are subject to the decision; and
  - (c) provide reasons for the decision; and
  - (d) if the decision is a determination based on a rule in a regional coastal plan or proposed regional coastal plan that relates to the character, intensity, or scale of occupation of the interim aquaculture management area by aquaculture activities,—
    - (i) specify the rule; and
    - (ii) state that the rule may not be revoked or amended until the chief executive makes a further aquaculture decision in relation to the area affected by the revocation or amendment; and
  - (e) be notified to the regional council.
- (2) If the chief executive makes a reservation, the reservation must also include—

- (a) whether the reservation relates to customary, recreational, or commercial fishing or a combination of them; and
  - (b) if the reservation relates only to commercial fishing, the stocks and areas concerned, specifying any stocks subject to the quota management system, any stocks or species specified in Schedules 4C and 4D, and any stocks for species not subject to the quota management system; and
  - (c) any other matters required by regulations to be included.
- (3) The chief executive must—
  - (a) publicly notify the fact that he or she has made a determination or reservation; and
  - (b) in the notice published for that purpose, include—
    - (i) the information specified in subsections (1) and (2); and
    - (ii) information about where a copy of the determination or reservation can be obtained.

#### **42 Appeal against aquaculture decision**

- (1) The following persons may appeal to the High Court against an aquaculture decision:
  - (a) the regional council that requested the aquaculture decision;
  - (b) any person consulted or who ought to have been consulted under section 38(4);
  - (c) any person who has an interest in the decision greater than the public generally.
- (2) An appeal must be filed within 3 months after public notification of the aquaculture decision.
- (3) The High Court may confirm or modify the aquaculture decision appealed against or substitute a different aquaculture decision.

#### **43 Judicial review of aquaculture decision**

Any person wishing to seek, under Part 1 of the Judicature Amendment Act 1972, judicial review of an aquaculture decision must do so within 3 months after the public notification of the decision.

**44 Interim aquaculture management area becomes aquaculture management area following aquaculture decision**

- (1) If the chief executive makes an aquaculture decision under section 38, the regional council must amend the regional coastal plan and any proposed regional coastal plan as follows:
  - (a) in the case of a determination, by noting on the plan the details of the determination;
  - (b) in the case of a reservation,—
    - (i) by noting on the plan the details of the reservation; and
    - (ii) if the reservation relates to the sustainability of fisheries resources or effects on customary or recreational fishing, by deleting from the plan the area or areas that the reservation relates to.
- (2) However, if, when the aquaculture decision is made under section 38, an interim aquaculture management area is in a regional coastal plan, the regional council must comply with sections 9 to 12 of the Maori Commercial Aquaculture Claims Settlement Act 2004 before it complies with subsection (1).
- (3) Schedules 1 and 1A and of the principal Act do not apply to an amendment made under subsection (1).
- (4) On and from the date on which the regional council complies with subsection (1), the interim aquaculture management area becomes an aquaculture management area.

*Deemed aquaculture management areas***45 Existing coastal permits deemed to be aquaculture management areas**

- (1) This section applies—
  - (a) to a coastal permit—
    - (i) that has been deemed to be a coastal permit under any of sections 10, 20, or 21; but
    - (ii) only to the extent contemplated by section 28; and
  - (b) subject to section 53.

- (2) This section does not apply in respect of any space identified in a regional coastal plan or proposed regional coastal plan at the commencement of this Act as space in which aquaculture activities authorised by the coastal permit are prohibited.
- (3) The area to which a coastal permit that this section applies to is deemed to be an aquaculture management area for the purposes of the principal Act and, if the relevant plan is not operative, the relevant plan must be treated as if it were operative.
- (4) The deemed aquaculture management area is subject to the provisions of the regional coastal plan or proposed regional coastal plan that apply to the area.
- (5) An area that is deemed to be an aquaculture management area by this section ceases to be an aquaculture management area if a plan that applies to the area becomes operative after the commencement of this Act and does not provide for the area to continue to be an aquaculture management area.

*Existing applications and coastal permits*

**46 Pending applications where moratorium ends before  
31 December 2004**

- (1) This section applies to an application—
  - (a) that section 150B(2) of the principal Act applies to; but
  - (b) only to the extent that it relates to an area that an Order in Council made under section 150C(1) of the principal Act applies to.
- (2) At the end of the moratorium, a consent authority must—
  - (a) resume processing an application; and
  - (b) process and determine the application under rules in the regional coastal plan, and in any proposed regional coastal plan, as at the end of the moratorium.
- (3) For the purposes of subsection (1), rules in a proposed regional coastal plan include any rule prohibiting an activity if the plan has been notified under clause 5 of Schedule 1 of the principal Act.
- (4) Subsection (3) applies subject to section 20 of the principal Act.

**47 Pending applications where moratorium ends on close of 31 December 2004**

- (1) This section applies to an application—
  - (a) that section 150B(2) of the principal Act applies to; but
  - (b) only to the extent that it relates to an area for which the moratorium expires on the close of 31 December 2004.
- (2) After the end of the moratorium, a consent authority must resume processing an application; but only if and to the extent that the application relates to a regional coastal plan that provides for an aquaculture management area and the application relates to the aquaculture management area.
- (3) An application referred to in subsection (2) must be processed and determined under the rules in the regional coastal plan and any proposed regional coastal plan at the time the consent authority resumes processing the application.
- (4) However, a consent authority must not grant a coastal permit to occupy space for aquaculture activities in an aquaculture management area that is subject to a reservation relating to commercial fishing, except to a person specified in a notice given by the chief executive under section 186ZK of the Fisheries Act 1996 as the holder of an aquaculture agreement under that Act.
- (5) An application is deemed to be cancelled on and from the date on which a proposed regional coastal plan is notified under clause 5 of Schedule 1 of the principal Act after the commencement of this Act if and to the extent that the application relates to an area covered by the plan and the plan provides for aquaculture management areas, but it does not include the area that the application relates to.
- (6) An application is deemed to be cancelled on and from 31 December 2014 to the extent that, by that date,—
  - (a) no proposed regional coastal plan covering the area that the application relates to has been notified under clause 5 of Schedule 1 of the principal Act; or
  - (b) a proposed regional coastal plan covering the area that the application relates to has been notified under clause 5 of Schedule 1 of the principal Act, but the plan contains no aquaculture management areas.



- (7) This section—
  - (a) prevails over Part 7 of the principal Act; but
  - (b) applies subject to the Maori Commercial Aquaculture Claims Settlement Act 2004.
- (8) In this section, **aquaculture management area** does not include an area that is deemed to be an aquaculture management area under section 45.

**48 Certain coastal permits granted during moratorium not to be exercised until end of moratorium**

- (1) This section applies to a coastal permit if—
  - (a) the application for the permit was notified during the moratorium but before the commencement of the Resource Management (Aquaculture Moratorium) Amendment Act 2002; or
  - (b) the consent authority decided, during the moratorium but before the commencement of the Resource Management (Aquaculture Moratorium) Amendment Act 2002, not to notify the application for the permit.
- (2) However, this section does not apply to a coastal permit for aquaculture activities that relates to a coastal marine area that, immediately before the moratorium, was subject to—
  - (a) a coastal permit; or
  - (b) a marine farming lease or licence under the Marine Farming Act 1971.
- (3) No person may do anything under a coastal permit until the moratorium has expired in relation to the area that the permit relates to.
- (4) At the end of the moratorium, a regional council may—
  - (a) review the conditions in a coastal permit; and
  - (b) amend the conditions so that they comply with the rules in the regional coastal plan and any proposed regional coastal plan that apply at the end of the moratorium.
- (5) If a coastal permit relates to a restricted coastal activity, section 119A of the principal Act applies in relation to the amendment of conditions under subsection (4)(b).
- (6) At the end of the moratorium,—

- (a) no person may carry on any aquaculture activities under a coastal permit in any area in which aquaculture is prohibited; and
  - (b) the coastal permit ceases to have any effect and is deemed to be cancelled.
- (7) For the purposes of section 125 of the principal Act, the commencement date of a coastal permit is the later of—
  - (a) the day after the date on which the moratorium ceases to apply to the coastal permit; or
  - (b) the day after the date on which the regional council notifies the holder of the permit of the result of a review under subsection (4).
- (8) Sections 357 and 358 of the principal Act apply to a decision by a regional council to amend conditions under subsection (4).

**49 Preferential right for deemed permit holder to apply for coastal permit for occupation**

- (1) Subsection (2) applies if—
  - (a) a person holds a lease or licence that is deemed to be a coastal permit by section 10; and
  - (b) the deemed coastal permit relates to an area in an aquaculture management area; and
  - (c) the person is giving effect to the deemed coastal permit.
- (2) No person, other than the permit holder, may apply for a coastal permit to occupy the area that the deemed coastal permit relates to.
- (3) However, subsection (2) does not apply if—
  - (a) the permit holder consents in writing to the application; or
  - (b) the coastal permit has expired and—
    - (i) the holder of the permit has not applied for a new coastal permit to occupy the same area to undertake an aquaculture activity; or
    - (ii) the holder of the permit has applied for a new coastal permit for the same area and the application has been refused and all appeals against the refusal have been withdrawn or dismissed; or

- (c) the coastal permit has lapsed under section 125 of the principal Act; or
  - (d) the coastal permit has been cancelled under section 126 of the principal Act; or
  - (e) the coastal permit has been surrendered under section 138 of the principal Act.
- (4) This section does not limit or affect section 124 of the principal Act.

*Pre-moratorium and pre-commencement  
applications for coastal permits*

**50 Pre-moratorium and pre-commencement applications for coastal permits not subject to moratorium**

- (1) Subsection (2) applies to an application for a coastal permit under the principal Act to occupy a coastal marine area for aquaculture activities if the application—
- (a) was made before the commencement of this Act; and
  - (b) is not subject to section 150B(2) of the principal Act; and
  - (c) has not been determined or withdrawn before the commencement of this Act.
- (2) An application to which this subsection applies must be determined under the principal Act as if the Resource Management Amendment Act (No 2) 2004 had not been passed.
- (3) A person who has made an application that subsection (2) applies to may apply, or continue with an application, for a marine farming permit under section 67J of the Fisheries Act 1983 or a spat catching permit under section 67Q(2) of that Act if the application under that Act relates to all or part of the area, and 1 or more of the species of fish, aquatic life, or seaweed, that the application that subsection (2) applies to relates to.
- (4) An application under subsection (3) lapses if the application to which subsection (2) applies is—
- (a) withdrawn; or
  - (b) declined and any appeal in relation to the declined application has been unsuccessful or withdrawn.

- (5) If an application that subsection (2) applies to is granted, the application under subsection (3) must be determined under the Fisheries Act 1983 as if this Act had not been passed.
- (6) If the application is for a marine farming permit and the application is granted, section 20 applies to the permit as if every reference in that section to the commencement of this Act were a reference to the date on which the application was granted.
- (7) If the application is for a spat catching permit and the application is granted, section 21 applies to the permit as if every reference in that section to the commencement of this Act were a reference to the date on which the application was granted.

**51 Regional council must request aquaculture decision if application for coastal permit declined or withdrawn**

- (1) This section applies to—
  - (a) an application for a coastal permit to occupy a coastal marine area for aquaculture activities if the application—
    - (i) is made before the commencement of this Act; and
    - (ii) is not subject to section 150B(2) of the principal Act; and
    - (iii) relates to part of an interim aquaculture management area; and
    - (iv) has been declined or withdrawn:
  - (b) a coastal permit if—
    - (i) it was granted under an application to which paragraph (a)(i) to (iii) applies; and
    - (ii) no marine farming permit or spat catching permit has been issued in relation to the coastal permit; and
    - (iii) the coastal permit—
      - (A) lapses under section 125 of the principal Act; or
      - (B) expires and the holder of the permit is not entitled under section 124 of the principal Act to continue to operate under the coastal permit; or

- (C) is cancelled under section 126 of the principal Act; or
  - (D) is surrendered under section 138 of the principal Act.
- (2) The regional council to which the application was made or which granted the coastal permit must request an aquaculture decision for the part of the interim aquaculture management area concerned.
- (3) Sections 38 to 44 apply to the request.

Section 51(1)(a)(iii): amended, on 28 September 2008, by section 5(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

Section 51(2): amended, on 28 September 2008, by section 5(2)(a) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

Section 51(2): amended, on 28 September 2008, by section 5(2)(b) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

Section 51(3): substituted, on 28 September 2008, by section 5(3) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

## **52 Areas excluded from interim aquaculture management area**

- (1) This section applies to an application for—
  - (a) a marine farming permit under section 67J of the Fisheries Act 1983;
  - (b) a spat catching permit under section 67Q(2) of the Fisheries Act 1983.
- (2) If the chief executive of the Ministry of Fisheries has declined an application to which this section applies, whether before or after the commencement of this Act, the regional council must delete from an interim aquaculture management area any area to which the application applies.
- (3) If the chief executive of the Ministry of Fisheries has granted an application to which this section applies, whether before or after the commencement of this Act, the area to which the application relates is to be treated as if the chief executive had made a determination under section 38 of this Act in relation to it and section 44 applies accordingly.

Section 52 heading: amended, on 28 September 2008, by section 6(1) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

Section 52(2): substituted, on 28 September 2008, by section 6(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

Section 52(3): substituted, on 28 September 2008, by section 6(2) of the Aquaculture Reform (Repeals and Transitional Provisions) Amendment Act 2008 (2008 No 92).

### *Review of off-site farms*

#### **53 Off-site farms**

- (1) This section applies to a deemed coastal permit under any of sections 10, 20, or 21 for which the actual space is not the authorised space.
- (2) The holder of a deemed coastal permit may, within 2 years after the commencement of this Act, apply in writing to the consent authority to amend the permit to reflect the actual space.
- (3) An application under this section must include—
  - (a) the description, to a standard approved by the consent authority, of the actual space; and
  - (b) the description of the authorised space; and
  - (c) an assessment of the adverse effects on the environment of the activity in the actual space, and of moving the activity to the authorised space (including the effects of moving the activity and the effects of the activity in the authorised space); and
  - (d) the reasons for and against amending the permit to reflect the actual space.
- (4) Section 92 of the principal Act applies, with all necessary modifications, to an application under this section as if it were an application for a resource consent.
- (5) After considering an application under this section and consulting the chief executive about it, the consent authority must—
  - (a) amend the deemed coastal permit as requested by the consent holder; or
  - (b) decline to amend the permit and require the consent holder to move the activity to the authorised space.

- (6) Section 120 of the principal Act applies to a decision of the consent authority under subsection (5) as if the decision were a decision on a review of consent conditions.
- (7) A deemed coastal permit amended under this section must not authorise the holder of the permit to occupy a space greater than the authorised space.
- (8) A consent authority must advise the chief executive of its decision under subsection (5).
- (9) As soon as practicable after receiving the advice under subsection (8), the chief executive must amend the fish farmer registration that the advice relates to.
- (10) Sections 357(5) to (8) and 358 and of the principal Act apply to a decision of the consent authority under subsection (5).
- (11) Section 36 of the principal Act applies to the functions of the consent authority under this section as if an application to amend a deemed coastal permit were an application for resource consent.
- (12) In this section,—  
**actual space** means the space in relation to which the deemed coastal permit is being exercised  
**authorised space** means the space specified in the deemed coastal permit.

**54 Consent authority may initiate review of off-site farms**

- (1) This section applies to deemed coastal permits to which section 53 applies.
  - (2) A consent authority may review a deemed coastal permit to the same extent and within the same time as if the holder of the permit had applied under section 53(2).
  - (3) For the purposes of subsection (2), section 53(5) to (12) applies with all necessary modifications.
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## Resource Management Amendment Act 2005

Public Act    2005 No 87  
Date of assent    9 August 2005  
Commencement    see section 2

### **1    Title**

- (1) This Act is the Resource Management Amendment Act 2005.
- (2) In this Act, the Resource Management Act 1991 is called “the principal Act”.

### **2    Commencement**

- (1) This Act comes into force on the day after the date on which it receives the Royal assent, except as provided in subsections (2) to (5).
- (2) Section 22(1) comes into force 12 months after the date on which this Act receives the Royal assent.
- (3) The following provisions come into force 24 months after the date on which this Act receives the Royal assent:
  - (a) section 22(2):
  - (b) section 25(2).
- (4) Section 67 comes into force 36 months after the date on which this Act receives the Royal assent.
- (5) The following provisions come into force on a date to be appointed by the Governor-General by Order in Council:
  - (a) section 108:
  - (b) section 115(2) to (4):
  - (c) section 117.

### **131    Transitional provisions relating to provisions of principal Act**

- (1) The amendments made by this Act do not apply to—
  - (a) a policy statement, plan, change, or variation that, on or before the commencement of this Act, has been publicly notified but has not proceeded to the stage at which no further appeal is possible; or



- (b) an application for a resource consent or any other matter in relation to a resource consent that, on or before the commencement of this Act, has been made but has not proceeded to the stage at which no further appeal is possible; or
  - (c) a requirement for a designation or heritage order for which, at the commencement of this Act, notice has been given under sections 168 or 168A or sections 189 or 189A of the principal Act, as the case may be, but which has not proceeded to the stage where no further appeal is possible.
- (2) Subsection (1) applies subject to subsections (3) to (9).
- (3) Section 39B(1) to (4) of the principal Act applies to an application made before the commencement of those provisions if, at their respective commencement dates, the hearing has not commenced.
- (4) Sections 67(1), (2), (3)(a) and (b), (4), and (6) and 75(1), (2), (3)(a) and (b), (4), and (5) of the principal Act, as substituted by sections 41 and 46, apply to a proposed plan that, at the commencement of this Act, has been notified.
- (5) If, at the commencement of this Act, a hearing has not commenced, the following provisions apply to an application for a resource consent made before the commencement of this Act:
  - (a) section 99 of the principal Act as substituted by this Act; and
  - (b) section 99A of the principal Act inserted by this Act.
- (6) The following provisions of the principal Act apply to the matters described in section 140(c) of the principal Act, whether they arise before or after the commencement of this Act:
  - (a) the amendment to section 29 made by this Act; and
  - (b) sections 140 and 141 as substituted by this Act; and
  - (c) sections 141B and 141C inserted by this Act; and
  - (d) sections 142 to 149 as substituted by this Act; and
  - (e) sections 149A and 149B inserted by this Act; and
  - (f) section 150 as substituted by this Act; and
  - (g) section 150AA inserted by this Act.

- (7) Clause 8AA of Schedule 1 of the principal Act applies to a proposed policy statement or a proposed plan if, at the commencement of this Act, the hearing has not commenced.
- (8) The amendments to clause 17 of Schedule 1 of the principal Act made by this Act apply to a policy statement or plan that, at the commencement of this Act, is a proposed policy statement or a proposed plan.
- (9) Clause 20A of Schedule 1 of the principal Act applies to a policy statement or plan that, at the commencement of this Act, is operative.
- (10) Any material incorporated into a plan by reference before the commencement of this Act is treated as if it had been incorporated under clause 30 of Schedule 1 of the principal Act, and clauses 31 to 35 of Schedule 1 of the principal Act apply accordingly, with any necessary modifications.

### **133 Transitional provision for service of notice**

- (1) Subsection (2) applies—
  - (a) to plans or proposed plans existing on 1 August 2003; and
  - (b) until those plans are reviewed.
- (2) Despite section 94(1) of the principal Act, a consent authority is not required to serve notice of an application for a resource consent for a controlled or restricted discretionary activity if a rule in a plan or proposed plan expressly provides—
  - (a) that such an application does not need to be notified; or
  - (b) that notice of such an application does not need to be served.

### **134 Transitional provision on allocation plans**

The enactment of section 30(1)(fa) and (fb) and (4) of the principal Act by this Act has no effect on any plan made before the day after the date on which this Act receives the Royal assent.

**135 Transitional provisions relating to regulations made under provisions of principal Act**

- (1) Sections 43B, 43D, and 43E of the principal Act, as substituted by section 29, do not apply to national environmental standards made before the commencement of this Act.
  - (2) Regulations made under section 360(1)(hi) of the principal Act may provide how the powers specified in sections 41B and 41C of the principal Act apply to a hearing that has commenced before the regulations come into force.
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## **Resource Management (Simplifying and Streamlining) Amendment Act 2009**

Public Act    2009 No 31  
Date of assent    22 September 2009  
Commencement    see section 2

### **1    Title**

This Act is the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

### **2    Commencement**

This Act comes into force on 1 October 2009.

## **Part 2 Transitional provisions and amendments to other enactments**

### **Subpart 1—Transitional provisions**

#### **151    Legal effect of rules**

- (1) This section applies to—
- (a) a rule in a proposed plan, if the proposed plan was notified under clause 5 of Schedule 1 of the principal Act before 1 October 2009; and
  - (b) a rule in a change, if the change was notified under clause 26(b) of Schedule 1 of the principal Act before 1 October 2009.
- (2) The legal effect of the rule must be determined as if the amendments made by this Act had not been made.

#### **152    Existing rules providing for protection of trees**

- (1) On 1 January 2012, an existing rule or part of a rule in a district plan or proposed district plan that prohibits or restricts the felling, damaging, or removal of any tree, or group of trees, in an urban environment is revoked without further authority than this section.

- (2) On the commencement of this section, an existing rule or part of a rule in a district plan or proposed district plan that prohibits or restricts the trimming of any tree, or group of trees, in an urban environment is revoked without further authority than this section.
- (3) Subsections (1) and (2) apply unless the rule relates to a tree, or group of trees,—
  - (a) specifically identified in the plan or proposed plan; or
  - (b) located within an area in the district that—
    - (i) is a reserve (within the meaning of section 2(1) of the Reserves Act 1977); or
    - (ii) is subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.
- (4) Each local authority must, before 1 January 2012,—
  - (a) amend any rule in its plan or proposed plan to which subsection (1) applies; and
  - (b) use the Schedule 1 procedure in the principal Act to make the amendment.
- (5) In this section, **urban environment** has the meaning given in section 76(4B) of the principal Act.

**153 National environmental standards**

The amendments made by this Act apply to a national environmental standard whether the standard was in force before or after the commencement of this section.

**154 National policy statements**

The amendments made by this Act apply to a national policy statement whether the statement was issued before or after the commencement of this section.

**155 Proposals of national significance called in**

- (1) Subsection (2) applies to a resource consent application, notice of requirement, or request for a change to a plan that, immediately before the commencement of this section,—

- (a) had been lodged with or initiated by a local authority; and
  - (b) had been called in by the Minister for the Environment or Minister of Conservation under section 141B of the principal Act; but
  - (c) had not proceeded to the stage at which no further appeal was possible.
- (2) The application, notice of requirement, or request must be determined as if the amendments made by this Act had not been made.

**156 Restricted coastal activities**

- (1) Subsection (4) applies to an application for a coastal permit for a restricted coastal activity that, immediately before the commencement of this section,—
  - (a) had been publicly notified under section 93 of the principal Act; but
  - (b) had not been decided by the Minister of Conservation.
- (2) Subsection (4) also applies to an application to change or cancel a condition of a coastal permit for a restricted coastal activity if, immediately before the commencement of this section,—
  - (a) the consent authority had decided, under section 127 of the principal Act, whether to notify the application; but
  - (b) the application had not proceeded to the stage at which no further appeal was possible.
- (3) Subsection (4) also applies to a review of the conditions of a coastal permit for a restricted coastal activity if, immediately before the commencement of this section,—
  - (a) the consent authority had decided, under section 130 of the principal Act, whether to notify the review; but
  - (b) the review had not proceeded to the stage at which no further appeal was possible.
- (4) The application or review must be determined as if the amendments made by this Act had not been made.

**157 Notices of requirement**

- (1) Subsection (2) applies to a requirement for a designation or heritage order if, immediately before the commencement of this section,—
- (a) 1 or more of the following had occurred:
    - (i) a notice of the requirement had been given under section 168(1) or (2) or 189(1) of the principal Act;
    - (ii) the territorial authority had resolved to publicly notify the requirement under section 168A(1) of the principal Act;
    - (iii) the territorial authority had given notice of the requirement under section 189A(1) of the principal Act;
    - (iv) a requiring authority had given notice of the requirement, and the requirement was for a modified designation, under clause 4 of Schedule 1 of the principal Act;
    - (v) the territorial authority had decided to include the requirement in its proposed district plan under clause 4 of Schedule 1 of the principal Act; but
  - (b) the requirement had not proceeded to the stage at which no further appeal was possible.
- (2) The requirement must be determined as if the amendments made by this Act had not been made.
- (3) Subsections (1) and (2) also apply as if a requirement to alter a designation or heritage order were a requirement for a designation or heritage order.

**158 Enforcement proceedings**

- (1) Subsection (2) applies to an application for an enforcement order or to an information that—
- (a) relates to acts or omissions before the commencement of this section; and
  - (b) either—
    - (i) was lodged or laid before the commencement of this section but, immediately before the commencement of this section, had not proceeded to

the stage at which no further appeal was possible;  
or

- (ii) is lodged or laid after the commencement of this section.
- (2) The application, or the proceedings relating to the information, must be determined as if the amendments made by this Act had not been made.
  - (3) The period for laying an information in respect of an offence against section 338(1A) or (1B) of the principal Act is the period specified in section 338(4) of the principal Act, as amended by this Act, only if the offence is committed after the commencement of this section.

**159 Outstanding applications for resource consent where further information requested**

- (1) A consent authority must determine that an application for a resource consent has lapsed if—
  - (a) the application was lodged before the commencement of the Resource Management Amendment Act 2005; and
  - (b) the consent authority requests, or has requested, further information on the application under section 92(1) of the principal Act; and
  - (c) the applicant does not comply with the request within 12 months after the later of the following:
    - (i) the date of commencement of this section;
    - (ii) the date on which the request was made.
- (2) An application that is lodged again with a consent authority after lapsing under subsection (1) must be treated for the purposes of the principal Act as if it were a new application for a resource consent.

**160 Applications and matters lodged before commencement**

- (1) Subsection (3) applies to anything specified in subsection (2) that, immediately before the commencement of this section,—
  - (a) had been lodged with or initiated by a local authority or a Minister; but
  - (b) had not proceeded to the stage at which no further appeal was possible.



- (2) The things referred to in subsection (1) are—
  - (a) an application for a resource consent (or anything treated by the principal Act as if it were an application for a resource consent):
  - (b) any other matter in relation to a resource consent (or in relation to anything treated by the principal Act as if it were a resource consent):
  - (c) an application for a water conservation order under section 201(1) of the principal Act:
  - (d) an application to revoke or amend a water conservation order under section 216(2) of the principal Act:
  - (e) an application or a proposal to vary or cancel an instrument creating an esplanade strip under section 234(1) or (3) of the principal Act:
  - (f) a matter of creating an esplanade strip by agreement under section 235(1) of the principal Act.
- (3) The application or matter must be determined as if the amendments made by this Act had not been made.
- (4) This section is subject to sections 156 and 159.

**161 Certain proposed policy statements or plans, changes, and variations publicly notified before commencement**

- (1) Subsection (2) applies to a proposed policy statement or plan or a change that, immediately before 1 October 2009,—
    - (a) had been publicly notified under clause 5 or 26(b) of Schedule 1 of the principal Act; but
    - (b) had not proceeded to the stage at which no further appeal was possible.
  - (2) The proposed policy statement or plan or change must be determined as if the amendments made by this Act had not been made.
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## **Local Government (Auckland Transitional Provisions) Act 2010**

Public Act    2010 No 37  
Date of assent    14 June 2010  
Commencement    see section 2

### **1    Title**

This Act is the Local Government (Auckland Transitional Provisions) Act 2010.

### **2    Commencement**

- (1) Parts 1 and 3 (except section 113(2)) come into force on 1 November 2010.
- (2) Section 113(2) comes into force on 1 July 2012.
- (3) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

## **Part 1**

### **Savings, transitional provisions, and related matters (except employment)**

Subpart 2—Savings and transitional  
provisions relating to Auckland Council and  
its subsidiaries

#### *Other planning matters*

### **81    Appeals against change or variation under Local Government (Auckland) Amendment Act 2004**

- (1) This section applies to an appeal under the Resource Management Act 1991, lodged before the commencement of this section, against a change or variation to an Auckland planning document prepared and publicly notified under sections 39 and 40 of the Local Government (Auckland) Amendment Act 2004.
- (2) The appeal must be determined as if—

- (a) sections 38 to 43 of the Local Government (Auckland) Amendment Act 2004 had not been repealed by this Act; and
  - (b) the Auckland Council had not adopted a spatial plan under Part 6 of the Local Government (Auckland Council) Act 2009 (so that section 80(2)(a) to (d) of this Act applies).
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**Contents**

- 1 General
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**Notes****1 General**

This is a reprint of the Resource Management Act 1991. The reprint incorporates all the amendments to the Act as at 1 April 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

**2 Status of reprints**

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 How reprints are prepared**

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see* <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989***

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5** *List of amendments incorporated in this reprint  
(most recent first)*

Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3): section 128  
Ngāti Apa (North Island) Claims Settlement Act 2010 (2010 No 129): section 41(2)

Private Security Personnel and Private Investigators Act 2010 (2010 No 115): section 121(1)

Local Government (Auckland Transitional Provisions) Act 2010 (2010 No 37): section 113(1)

Corrections (Use of Court Cells) Amendment Act 2009 (2009 No 60): section 5

Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31)

Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 (2009 No 26): section 36(2)

Te Roroa Claims Settlement Act 2008 (2008 No 100): section 81

Affiliate Te Arawa Iwi and Hapu Claims Settlement Act 2008 (2008 No 98): section 48  
Resource Management Amendment Act 2008 (2008 No 95)  
Policing Act 2008 (2008 No 72): sections 116(a)(ii), (iv), 130(1)  
Energy (Fuels, Levies, and References) Amendment Act 2008 (2008 No 60): section 17  
Land Transport Management Amendment Act 2008 (2008 No 47): section 50(1)  
Property Law Act 2007 (2007 No 91): section 364(1)  
Resource Management Amendment Act 2007 (2007 No 77)  
Ngāti Mutunga Claims Settlement Act 2006 (2006 No 61): sections 62, 98  
Te Arawa Lakes Settlement Act 2006 (2006 No 43): section 70  
Summary Proceedings Amendment Act 2006 (2006 No 13): section 36  
Resource Management Amendment Act 2005 (2005 No 87)  
Ngāa Rauru Kītahi Claims Settlement Act 2005 (2005 No 84): sections 57, 112  
Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005 (2005 No 72): section 63  
Building Amendment Act 2005 (2005 No 31): section 14(2)  
Ngāti Awa Claims Settlement Act 2005 (2005 No 28): section 58  
Relationships (Statutory References) Act 2005 (2005 No 3): section 7  
Resource Management Amendment Act (No 2) 2004 (2004 No 103)  
Maritime Transport Amendment Act 2004 (2004 No 98): section 11(3)  
Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94)  
Building Act 2004 (2004 No 72): section 414  
Local Government (Rating) Amendment Act 2004 (2004 No 66): section 13  
Resource Management Amendment Act 2004 (2004 No 46)  
Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004 (2004 No 5)  
Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2)  
Ngāti Tama Claims Settlement Act 2003 (2003 No 126): section 71  
Supreme Court Act 2003 (2003 No 53): section 48(1)  
State Sector Amendment Act 2003 (2003 No 41): section 14(1)  
Resource Management Amendment Act 2003 (2003 No 23)  
Ngāti Ruanui Claims Settlement Act 2003 (2003 No 20): section 107  
Local Government Act 2002 (2002 No 84): sections 262, 266  
Te Uri o Hau Claims Settlement Act 2002 (2002 No 36): section 74  
Civil Defence Emergency Management Act 2002 (2002 No 33): section 117  
Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11): section 65(4)  
Sentencing Act 2002 (2002 No 9): section 186  
Local Government (Rating) Act 2002 (2002 No 6): section 138(1)  
Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5)

Telecommunications Act 2001 (2001 No 103): section 158, 159(8)  
Summit Road (Canterbury) Protection Act 2001 (2001 No 3 (L)): section 36  
Pouakani Claims Settlement Act 2000 (2000 No 90): section 51  
Personal Property Securities Act 1999 (1999 No 126): section 191(1)  
Interpretation Act 1999 (1999 No 85): section 38(1)  
Land Transport Act 1998 (1998 No 110): section 215(1)  
Ngāi Tahu Claims Settlement Act 1998 (1998 No 97): section 226  
District Courts Amendment Act 1998 (1998 No 76): section 7  
Ratings Valuations Act 1998 (1998 No 69): sections 53, 54(1)  
Resource Management Amendment Act 1997 (1997 No 104)  
Ministries of Agriculture and Forestry (Restructuring) Act 1997 (1997 No 100):  
section 5(1)(c)  
Crown Minerals Amendment Act (No 2) 1997 (1997 No 91): section 4(2)  
Resource Management Amendment Act 1996 (1996 No 160)  
Fisheries Act 1996 (1996 No 88): section 316(1)  
Territorial Sea and Exclusive Economic Zone Amendment Act 1996 (1996  
No 74): section 5(4)  
Survey Amendment Act 1996 (1996 No 55): section 2(1)  
Hazardous Substances and New Organisms Act 1996 (1996 No 30): section  
149  
Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(1)  
Foreshore and Seabed Endowment Revesting Amendment Act 1994 (1994  
No 113): section 4  
Resource Management Amendment Act 1994 (1994 No 105)  
Otago Regional Council (Kuriwao Endowment Lands) Act 1994 (1994 No 4  
(L)): section 22(1)(c)  
Land Transfer Amendment Act 1993 (1993 No 124): section 4  
Resource Management Amendment Act 1993 (1993 No 65)  
Historic Places Act 1993 (1993 No 38): section 118(1), (2)  
Te Ture Whenua Maori Act 1993 (1993 No 4): section 362(2)  
Building Act 1991 (1991 No 150): section 92(1)  
Crown Minerals Amendment Act 1991 (1991 No 102): section 2(2)  
Resource Management Act 1991 (1991 No 69): section 392(2)  
Public Finance Act 1989 (1989 No 44): section 65R(3)

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