Resource Management Act 1991

Public Act 1991 No 69
Date of assent 22 July 1991

Contents

Note

This Act is administered in the Ministry for the Environment.

Part 4
Functions, powers, and duties of central and local government

Functions, powers, and duties of Ministers

Functions, powers, and duties of local authorities

Duties of local authorities and applicants

Powers and duties of local authorities and other public authorities

Part 6A
Aquaculture moratorium

Certain coastal permits continued

Part 7
Coastal tendering

Part 7A
Occupation of coastal marine area

Subpart 1—Aquaculture management areas and authorisations

Part 10
Subdivision and reclamations

Approval and deposit of survey plans

Esplanade reserves

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

BE IT ENACTED by the Parliament of New Zealand as follows:

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 the 1st day of October 1991.

(3)

Subsection (3) was repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

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 rights has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

access rights: this definition was inserted, as from 25 November 2004, by section 3(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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 to that Act)

Access strip: this definition was inserted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

accredited means to hold a qualification approved and notified under section 39A

accredited: this definition was inserted, as from 10 August 2005, by section 4(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 assessment: this definition was inserted, as from 25 November 2004, by section 3(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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

adverse effects report: this definition was inserted, as from 25 November 2004, by section 3(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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:

Agent or agent of the ship: this definition was inserted, as from 1 February 1995, by section 2(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

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

Aircraft: this definition was inserted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

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

Airport: this definition was inserted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

Allotment has the meaning set out in section 218

Amendment means an alteration to a proposed policy statement or plan made under clause 16 of Schedule 1

Amendment: this definition was inserted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

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 40, 41B, 41C, and 42A, means the person who initiated a matter described in section 39(1):

(b) in sections 141 to 150AA, has the meaning given to it by section 140

applicant: this definition was inserted, as from 10 August 2005, by section 4(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 activities: this definition was inserted, as from 26 March 2002, by section 4 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

aquaculture activities: this definition was substituted, as from 1 January 2005, by section 4(2) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

aquaculture management area—

(a) means a coastal marine area described as an aquaculture management area and included in a regional coastal plan or proposed regional coastal plan in accordance with section 165C; and

(b) includes—

(i) an interim aquaculture management area that becomes an aquaculture management area under section 44 of the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004; and

(ii) part of an aquaculture management area

aquaculture management area: this definition was inserted, as from 26 March 2002, by section 4 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

aquaculture management area: this definition was substituted, as from 1 January 2005, by section 4(2) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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

aquatic life: this definition was inserted, as from 1 January 2005, by section 4(3) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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:

Bed: this definition was substituted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

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

Benefits and costs: this definition was inserted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

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

biological diversity: this definition was inserted, as from 1 August 2003, by section 3(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

board, in relation to a foreshore and seabed reserve, has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

board: this definition was inserted, as from 25 November 2004, by section 3(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Board of inquiry means a board of inquiry appointed under section 146 to consider an application for a resource consent or a board of inquiry appointed under section 47

Board of inquiry: this definition was amended, as from 1 August 2003, by section 3(2) Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "47" for the expression "46". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Certificate of compliance means a certificate granted by a local authority under section 139

Certificate of compliance: this definition was amended, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65) by substituting the word "local" for the word "territorial".

Change includes a change proposed by a local authority to an operative policy statement or plan under Part 1 of Schedule 1 and a change proposed by any person to a policy statement or plan under Part 2 of Schedule 1

Change: this definition was substituted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

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

climate change: this definition was inserted, as from 2 March 2004, by section 4 Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2). *See* sections 8 and 9 of that Act for transitional provisions relating to applications and rules made before 2 March 2004.

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) One 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 marine area: this definition was amended, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "the foreshore, seabed, and coastal water, and the air space above the water" for the words "that area of the foreshore and seabed".

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

commercial fishing: this definition was inserted, as from 1 January 2005, by section 4(3) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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

Company lease: this definition was amended, as from 1 July 1994, by section 4 Land Transfer Amendment Act 1993 (1993 No 124) by substituting the words "section 121A of the Land Transfer Act 1952" for the words "Part 1 of the Companies Amendment Act 1964".

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 the Minister of Conservation, 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 authority: this definition was substituted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

Consent notice means a notice issued under section 221

Constable means any member of the Police

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 combination 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:

Contaminant: this definition was amended, as from 1 August 2003, by section 3(3) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "odorous compounds," after the word "gases,". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

contaminated land means land of 1 of the following kinds

(a) if there is an applicable national environmental standard on contaminants in soil, the land is more contaminated than the standard allows; or

(b) if there is no applicable national environmental standard on contaminants in soil, the land has a hazardous substance in or on it that—

  (i) has significant adverse effects on the environment; or

  (ii) is reasonably likely to have significant adverse effects on the environment

contaminated land: this definition was inserted, as from 10 August 2005, by section 4(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Contravene includes fail to comply with

controlled activity means an activity described in section 77B(2)

controlled activity: this definition was substituted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

controlled activity: this definition was substituted, as from 1 August 2003, by section 3(4) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Costs and benefits*[Repealed]*

Costs and benefits: this definition was repealed, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

[Repealed]

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:

customary rights order has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

customary rights order: this definition was inserted, as from 25 November 2004, by section 3(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Declaration means a declaration about any of the matters set out in section 310 made by the Environment Court under section 313 or section 313A

Declaration: the words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Declaration: this definition was amended, as from 10 August 2005, by section 4(2) Resource Management Amendment Act 2005 (2005 No 87) by adding the words "or section 313A". *See* sections 131 to 135 of that Act as to the transitional provisions. Though the words "or section 313A" have been added to this definition, in fact no new section 313A has been included in this Act. The thrust of the proposed section 313A included in the Bill to the Resource Management Amendment Act 2005 (2005 No 87) seems to have been included, instead, in new section 313(2) and (3) of this Act, inserted by section 117 of that Act.

Designation has the meaning set out in section 166

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

determination: this definition was inserted, as from 1 January 2005, by section 4(3) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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

Director of Maritime New Zealand or Director: this definition was substituted, as from 1 July 2005, by section 11(3) Maritime Transport Amendment Act 2004 (2004 No 98).

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 77B(4)

Discretionary activity: this definition was substituted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

discretionary activity: this definition was substituted, as from 1 August 2003, by section 3(5) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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: this definition was substituted, as from 17 December 1997, by section 2(1) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

District: this definition was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

District plan means an operative plan approved by a territorial authority under Schedule 1; and includes all operative changes to such a plan (whether arising from a review or otherwise)

District rule means a rule made as part of a district plan or proposed district plan in accordance with sections 76 and 77A

District rule: this definition was amended, as from 17 December 1997, by section 2(2) Resource Management Amendment Act 1997 (1997 No 104) by inserting the words "or proposed district plan". *See* section 78 of that Act as to the transitional provisions.

District rule: this definition was amended, as from 1 August 2003, by section 3(6) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "sections 76 and 77A" for the expression "section 76". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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

Dumping: this definition was inserted, as from 1 February 1995, by section 2(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

Dumping: this definition was substituted, as from 17 December 1997, by section 2(8) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

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

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) of this definition or which are affected by those matters:

Environment Court means the Environment Court referred to in section 247

Environment Court: the Environment Court replaced the Planning Tribunal, as from 2 September 1996, pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

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 reserve: this definition was substituted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

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

Esplanade strip: this definition was inserted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

Excessive noise has the meaning set out in section 326

existing use certificate means a certificate issued under section 139A

existing use certificate: this definition was inserted, as from 10 August 2005, by section 4(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Exploration has the same meaning as in the Crown Minerals Act 1991

Exploration: this definition was inserted, as from 26 November 1997, by section 4(2) Crown Minerals Amendment Act (No 2) 1997 (1997 No 91). *See* section 4(2) of that Act as to the savings provisions.

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

fish: this definition was inserted, as from 1 January 2005, by section 4(3) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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

fisheries resources: this definition was inserted, as from 1 January 2005, by section 4(3) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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

fishing: this definition was inserted, as from 1 January 2005, by section 4(3) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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

foreshore and seabed reserve has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

foreshore and seabed reserve: this definition was inserted, as from 25 November 2004, by section 3(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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

Government road*[Repealed]*

Government road: this definition was repealed, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

[Repealed]

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

greenhouse gas: this definition was inserted, as from 2 March 2004, by section 4 Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2). *See* sections 8 and 9 of that Act for transitional provisions relating to applications and rules made before 2 March 2004.

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

Harmful substance: this definition was inserted, as from 1 February 1995, by section 2(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

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

harvestable spat: this definition was inserted, as from 1 January 2005, by section 4(3) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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

Hazardous substance: this definition was inserted, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

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 Maori, including wahi tapu; and
  (iv) surroundings associated with the natural and physical resources

historic heritage: this definition was inserted, as from 1 August 2003, by section 3(7) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

holder, in relation to a customary rights order, has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

holder: this definition was inserted, as from 25 November 2004, by section 3(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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

Incineration: this definition was inserted, as from 1 February 1995, by section 2(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

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 premises: this definition (that part after paragraph (c)) was amended, as from 17 December 1997, by section 2(3) Resource Management Amendment Act 1997 (1997 No 104) by omitting the words "and includes any factory farm;". *See* section 78 of that Act as to the transitional provisions.

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, 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

infrastructure: this definition was inserted, as from 10 August 2005, by section 4(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Interim enforcement order means an order made under section 320

Internal waters has the same meaning as in section 4 of the Territorial Sea 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

joint management agreement: this definition was inserted, as from 10 August 2005, by section 4(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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

Kaitiakitanga: this definition was substituted, as from 17 December 1997, by section 2(4) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

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

Lake: this definition was amended, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "", and for the purposes of Part 10 only means a lake whose bed has an area of 8 hectares or more".

Land includes land covered by water and the air space above land

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

management plan, in relation to a foreshore and seabed reserve, has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

management plan: this definition was inserted, as from 25 November 2004, by section 3(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

marine farming*[Repealed]*

marine farming: this definition was inserted, as from 26 March 2002, by section 4 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

marine farming: this definition was repealed, as from 1 January 2005, by section 4(1) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

[Repealed]

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

Marine incineration facility: this definition was inserted, as from 1 February 1995, by section 2(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

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

Maritime New Zealand: this definition was substituted, as from 1 July 2005, by section 11(3) Maritime Transport Amendment Act 2004 (2004 No 98).

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

Master: this definition was inserted, as from 1 February 1995, by section 2(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

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

Mineral: this definition was substituted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

Mining has the same meaning as in the Crown Minerals Act 1991

Mining: this definition was inserted, as from 26 November 1997, by section 4(2) Crown Minerals Amendment Act (No 2) 1997 (1997 No 91). *See* section 4(2) of that Act as to the savings provisions.

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 authority 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

Mouth: the words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

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

national environmental standard: this definition was inserted, as from 10 August 2005, by section 4(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 77B(5)

Non-complying activity: this definition was substituted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

Non-complying activity: this definition was substituted, as from 17 December 1997, by section 2(5) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Non-complying activity: this definition was substituted, as from 1 August 2003, by section 3(8) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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)

notice of decision: this definition was inserted, as from 1 August 2003, by section 3(8) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Occupier means—

(a) The inhabitant occupier of any property; and

(b)

(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:

Occupier: paragraph (b) of this definition was repealed, as from 1 July 2003, by section 138(1) Local Government (Rating) Act 2002 (2002 No 6). *See* section 138(2) of that Act for the savings provision that provides that the Acts and regulations continue in force to the extent necessary for the levying and collection of rates made or levied for the financial year ending on 30 June 2003 or a previous financial year.

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

occupy: this definition was inserted, as from 1 January 2005, by section 4(3) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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

Offshore installation: this definition was inserted, as from 1 February 1995, by section 2(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

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

Oil transfer site: this definition was inserted, as from 1 February 1995, by section 2(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

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

On-scene commander: this definition was inserted, as from 1 February 1995, by section 2(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

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

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 has become operative in terms of clause 20 of Schedule 1 and has not ceased to be operative

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:

Owner: this definition was substituted, as from 1 February 1995, by section 2(1) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

permitted activity means an activity described in section 77B(1)

permitted activity: this definition was substituted, as from 1 August 2003, by section 3(9) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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

Plan means a regional plan or a district plan

Planning Tribunal and **Tribunal***[Repealed]*

Planning Tribunal and Tribunal: this definition was repealed, as from 17 December 1997, by section 2(6) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

[Repealed]

Policy statement means a regional policy statement

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

Production land: paragraph (b) of this definition was amended, as from 17 December 1997, by section 2(7) Resource Management Amendment Act 1997 (1997 No 104) by omitting the words "or used for factory farming;". *See* section 78 of that Act as to the transitional provisions.

prohibited activity means an activity described in section 77B(7)

Prohibited activity this definition was amended, as from 1 July 1993, by section 118(2) Historic Places Act 1993 (1993 No 38) by adding the words "; and includes any activity prohibited by section 105(2)(b) of the Historic Places Act 1993".

Prohibited activity: this definition was amended, as from 26 November 1997, by section 4(1) Crown Minerals Amendment Act (No 2) 1997 (1997 No 91) by inserting the words "and any 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, other than those prospecting, exploration, or mining activities set out in section 61(1A) of the Crown Minerals Act 1991". *See* section 4(2) of that Act as to the savings provisions.

prohibited activity: this definition was substituted, as from 1 August 2003, by section 3(10) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Proposed plan means a proposed plan, or variation to a proposed plan, or change to a plan that has been notified under clause 5 of Schedule 1 but has not become operative in terms of clause 20 of Schedule 1; but does not include a proposed plan or change originally requested by a person other than a local authority or a Minister of the Crown, unless the proposed plan or change is adopted and notified by the local authority under clause 25(2)(a) of Schedule 1

Proposed plan: this definition was substituted, as from 2 September 1996, by section 2 Resource Management Amendment Act 1996 (1996 No 160).

Prospecting has the same meaning as in the Crown Minerals Act 1991

Prospecting: this definition was inserted, as from 26 November 1997, by section 4(2) Crown Minerals Amendment Act (No 2) 1997 (1997 No 91). *See* section 4(2) of that Act as to the savings provisions.

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 authority: this definition was inserted, as from 10 August 2005, by section 4(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

public foreshore and seabed has the same meaning as in section 5 of the Foreshore and Seabed Act 2004

public foreshore and seabed: this definition was inserted, as from 25 November 2004, by section 3(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

public notice means a notice published in a newspaper circulating in the entire area likely to be affected by the proposal to which the notice relates

public notice: this definition was substituted, as from 1 August 2003, by section 3(11) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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

Raft: this definition was inserted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

recognised customary activity is an activity, use, or practice carried on, exercised, or followed under a customary rights order

recognised customary activity: this definition was inserted, as from 25 November 2004, by section 3(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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

Region: this definition was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Regional coastal plan means an operative plan approved by the Minister of Conservation under Schedule 1 and includes all operative changes to such a plan (whether arising from a review or otherwise)

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 Council: this definition was substituted, as from 1 November 1995, by section 35 Chatham Islands Council Act 1995 (1995 No 41).

Regional Council: this definition was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

regional council: this definition was substituted, as from 25 November 2004, by section 3(2) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Regional plan means an operative plan (including a regional coastal plan) approved by a regional council or the Minister of Conservation under Schedule 1; and includes all operative changes to such a plan (whether arising from a review or otherwise)

Regional policy statement means an operative regional policy statement approved by a regional council under Schedule 1; and includes all operative changes to such a policy statement (whether arising from a review or otherwise)

Regional road*[Repealed]*

Regional road: this definition was repealed, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

[Repealed]

Regional rule means a rule made as part of a regional plan or proposed regional plan in accordance with section 68 and section 77A

Regional rule: this definition was amended, as from 17 December 1997, by section 2(8) Resource Management Amendment Act 1997 (1997 No 104) by inserting the words "or proposed regional plan". *See* section 78 of that Act as to the transitional provisions.

regional rule: this definition was amended, as from 1 August 2003, by section 3(12) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "and section 77A". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Regulations means regulations made under this Act

Requiring authority has the meaning set out in section 166

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

renewable energy: this definition was inserted, as from 2 March 2004, by section 4 Resource Management (Energy and Climate Change) Amendment Act

2004 (2004 No 2). *See* sections 8 and 9 of that Act for transitional provisions relating to applications and rules made before 2 March 2004.

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

reservation: this definition was inserted, as from 1 January 2005, by section 4(3) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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—

(a) Which, in accordance with section 68, is stated by a regional coastal plan to be a restricted coastal activity; and

(b) For which the Minister of Conservation is the consent authority:

restricted discretionary activity means an activity described in section 77B(3)

restricted discretionary activity: this definition was inserted, as from 1 August 2003, by section 3(13) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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)

River: this definition was substituted, as from 7 July 1993, by section 2 Resource Management Amendment Act 1993 (1993 No 65).

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 Transit New Zealand Act 1989

Road: this definition was amended, as from 7 July 1993, by section 2(17) Resource Management Amendment Act 1993 (1993 No 65) by adding the words "; and includes a motorway as defined in section 2(1) of the Transit New Zealand Act 1989".

Rule means a district rule or a regional rule

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

seaweed: this definition was inserted, as from 1 January 2005, by section 4(3) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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

Ship: this definition was inserted, as from 1 February 1995, by section 2(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

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

soil conservation: this definition was inserted, as from 1 August 2003, by section 3(14) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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

space: this definition was inserted, as from 1 January 2005, by section 4(3) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

spat*[Repealed]*

spat: this definition was inserted, as from 26 March 2002, by section 4 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

spat: this definition was repealed, as from 1 January 2005, by section 4(1) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

[Repealed]

spat catching*[Repealed]*

spat catching: this definition was inserted, as from 26 March 2002, by section 4 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

spat catching: this definition was repealed, as from 1 January 2005, by section 4(1) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

[Repealed]

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 Transit New Zealand Act 1989

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

Structure: this definition was amended, as from 7 July 1993, by section 2(18) Resource Management Amendment Act 1993 (1993 No 65) by adding the words "; 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 submission and, in relation to the preparation or change of a policy statement or plan, includes any submission made under clause 8 of Schedule 1 in support of or in opposition to an original submission

Submission: this definition was amended, as from 7 July 1993, by section 2(19) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "8" for the expression "6".

Survey plan means a plan 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 or with the Registrar of Deeds; and any Crown plan prepared for a similar purpose as the case requires, and includes—

(a) A unit plan; and

(b) A plan to give effect to the grant of a cross lease or company lease:

taking*[Repealed]*

taking: this definition was inserted, as from 26 March 2002, by section 4 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

taking: this definition was repealed, as from 1 January 2005, by section 4(1) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

[Repealed]

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 authority: this definition was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Territorial sea means the territorial sea of New Zealand as defined by section 3 of the Territorial Sea 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

Variation means alteration by a local authority to a proposed policy statement, plan, or change under clause 16A of Schedule 1

Variation: this definition was inserted, as from 7 July 1993, by section 2(20) Resource Management Amendment Act 1993 (1993 No 65).

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

Waste or other matter: this definition was inserted, as from 1 February 1995, by section 2(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

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

working day: this definition was substituted, as from 1 August 2003, by section 3(15) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

(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.

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 was inserted, as from 2 September 1996, by section 3 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 was amended, as from 7 July 1993, by section 3 Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "in relation to the use, development, or protection of natural and physical resources, or in relation to the environment,".

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 was inserted, as from 7 July 1993, by section 4 Resource Management Amendment Act 1993 (1993 No 65).

4 Act to bind the Crown

(1) Except as provided in subsections (2) to (5), this Act shall bind the Crown.

(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(1) 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 to 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 to that Act; and

(b) Does not have a significant adverse effect beyond the boundary of the area of land.

(4)

(5) No enforcement order, abatement notice, excessive noise direction, or information shall be issued against the Crown.

Subsection (3) was substituted, and subsection (4) was repealed, as from 7 July 1993, by section 5 Resource Management Amendment Act 1993 (1993 No 65).

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 was inserted, as from 20 August 1998, by section 3 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

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 wellbeing 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 recognised customary activities.

Paragraph (f) was inserted, as from 1 August 2003, by section 4 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraph (g) was inserted, as from 17 January 2005, by section 4 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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)
(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.

Paragraph (aa) was inserted, as from 17 December 1997, by section 3 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Paragraph (ba) was inserted, as from 2 March 2004, by section 5(1) Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2).

See sections 8 and 9 of that Act for transitional provisions relating to applications and rules made before 2 March 2004.

Paragraph (e) was repealed, as from 1 August 2003, by section 5 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraphs (i) and (j) were inserted, as from 2 March 2004, by section 5(2) Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2). *See* sections 8 and 9 of that Act for transitional provisions relating to applications and rules made before 2 March 2004.

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 any land in a manner that contravenes a rule in a district plan or proposed district plan unless the activity is—

(a) Expressly allowed by a resource consent granted by the territorial authority responsible for the plan; or

(b) An existing use allowed by section 10 or section 10A.

(2) No person may contravene section 176 or section 178 or section 193 or section 194 (which relate to designations and heritage orders) unless the prior written consent of the requiring authority concerned is obtained.

(3) No person may use any land in a manner that contravenes a rule in a regional plan or a proposed regional plan unless that activity is—

(a) Expressly allowed by a resource consent granted by the regional council responsible for the plan; or

(b) Allowed by section 20A (certain existing lawful uses allowed).

(4) In this section, the word **use** in relation to any land means—

(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 land; or

(b) Any excavation, drilling, tunnelling, or other disturbance of the land; or

(c) Any destruction of, damage to, or disturbance of, the habitats of plants or animals in, on, or under the land; or

(d) Any deposit of any substance in, on, or under the land; or

(da) Any entry on to, or passing across, the surface of water in any lake or river; or

(e) Any other use of land—

and **may use** has a corresponding meaning.

(5) In subsection (1), **land** includes the surface of water in any lake or river.

(6) Subsection (3) does not apply to the bed of any lake or river.

(7) This section does not apply to any use of the coastal marine area.

(8) The application of this section to overflying by aircraft shall be limited to any noise emission controls that may be prescribed by a territorial authority in relation to the use of airports.

Subsection (1)(b) was amended, as from 7 July 1993, by section 6(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "section 10 or section 10A" for the words "section 10 (certain existing uses protected)".

Subsection (2) was amended, as from 7 July 1993, by section 6(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "section 176 or section 178 or section 193 or section 194 (which relate to designations and heritage orders)" for the words "section 178 or section 194 (which relate to requirements for designations and heritage orders and prohibit the doing of certain things)".

Subsection (3)(b) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "20A" for the expression "20". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4)(da) was inserted, as from 7 July 1993, by section 6(3) Resource Management Amendment Act 1993 (1993 No 65) .

Subsection (8) was inserted, as from 7 July 1993, by section 6(4) Resource Management Amendment Act 1993 (1993 No 65).

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 in-

creases 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) In this section, **use of land** has the same meaning as in section 9(4)(a) to (e) (except (da)) and **land may be used** has a corresponding meaning.

Subsection (1) was substituted, as from 7 July 1993, by section 7(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2) was amended, as from 10 August 2005, by section 5 Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "to" for the word "and" after the expression "357". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2)(b)(i) was amended, as from 7 July 1993, by section 7(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "will not be contrary to the objectives and policies of the district plan" for the words "on the integrity of the district plan is minor".

Subsection (3) was amended, as from 7 July 1993, by section 7(3) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or proposed district plan".

Subsection (5) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "20A" for the expression "20". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (6) was amended, as from 7 July 1993, by section 7(4) Resource Management Amendment Act 1993 (1993 No 65) by adding the expression "(except (da))".

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 being notified, 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 plan becomes operative, or the proposed plan is notified, if—

(a) The activity was lawfully established before the rule in the plan became operative or the rule in the proposed plan was notified; 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 was notified; 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 was inserted, as from 7 July 1993, by section 8 Resource Management Amendment Act 1993 (1993 No 65).

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 was notified; 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 been notified) 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 was notified 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) Subsections 10(4), (5), and (6) shall apply to this section.

Section 10B was inserted, as from 2 September 1996, by section 4 Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words "as defined in section 7 of the Building Act 2004" for the words "as defined in section 2 of the Building Act 1991". *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Subsections (2) to (4) were amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words "Building Act 2004" for the words "Building Act 1991" wherever they appear. *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

11 Restrictions on subdivision of land

(1) No person may subdivide land, within the meaning of section 218, unless the subdivision is—

(a) Expressly allowed by a rule in a district plan and in any relevant proposed district plan or a resource consent, and a survey plan relating to the subdivision has in accordance with Part 10—

(i) Been deposited by a District Land Registrar or a Registrar of Deeds; or

(ii) In the case of a subdivision by or on behalf of a Minister of the Crown, been approved by the Chief Surveyor for the purposes of section 228; 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 the Maori Land 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 to 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 section 129B of the Property Law Act 1952 (which relates to the granting of access to land-locked land).

(2) Subsection (1) does not apply in respect of Maori land within the meaning of the Maori Land Act 1993 unless that Act otherwise provides.

Subsection (1)(a) was amended, as from 7 July 1993, by section 9(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "and in any relevant proposed district plan".

Subsection (1)(c) was amended, as from 7 July 1993, by section 9(2) Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "; or a resumption under section 27D of the State-Owned Enterprises Act 1986".

The reference in subsection (1)(c) to "section 338 of the Maori Land Act 1993" has been substituted, as from 1 July 1993, for a reference to "section 439 of the Maori Affairs Act 1953" pursuant to section 362(2) Te Ture Whenua Maori/Maori Land Act 1993 (1993 No 4).

Subsection (1)(ca), (cb), and (cc) were inserted, as from 7 July 1993, by section 9(3) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2) was amended, as from 7 July 1993, by section 9(4) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "Maori Land Act 1993" for the words "Maori Affairs Act 1953".

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 rule in a regional coastal plan and in any relevant proposed regional coastal plan or a resource consent.

(2) No person may, in relation to land of the Crown in the coastal marine area, or land in the coastal marine area vested in the regional council,—

(a) Occupy any part of the coastal marine area; or

(b) Remove any sand, shingle, shell, or other natural material from the land—

unless expressly allowed by a rule in a regional coastal plan and in any relevant proposed regional coastal plan or by a resource consent.

(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 rule in a regional coastal plan or a proposed regional coastal plan 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)

(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 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) The application of this section to overflying by aircraft shall be limited to any noise emission controls that may be prescribed by a regional council in relation to the use of airports within the coastal marine area.

(6) This section shall not apply to anything to which section 15A or 15B applies.

Subsection (1) was amended, as from 7 July 1993, by section 10(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words ", in the coastal marine area," and by substituting the words "by a rule in a regional coastal plan and in any relevant proposed regional coastal plan" for the words "to do so by a rule in a regional coastal plan".

Subsection (1)(f) was amended, as from 1 August 2003, by section 6 Resource Management Amendment Act 2003 (2003 No 23) by inserting the expression "; or". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(g) was inserted, as from 1 August 2003, by section 6 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2) was substituted, as from 7 July 1993, by section 10(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2)(a) was substituted, as from 17 December 1997, by section 4(1) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "20A" for the expression "20". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4) was amended, as from 7 July 1993, by section 10(3) Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "and in section 13(1),". Subsection (4)(a) was substituted, as from 7 July 1993, by section 10(4) Resource Management Amendment Act 1993 (1993 No 65) and paragraph (b) was amended, as from 7 July 1993, by section 10(5) of the same amending Act by inserting the word "shell,".

Subsection (4) was amended, as from 17 December 1997, by section 4(2) Resource Management Amendment Act 1997 (1997 No 104) by substituting the words "In this Act" for the words "In this section". *See* section 78 of that Act as to the transitional provisions.

Subsection (4)(a) was substituted, as from 7 July 1993, by section 10(4) Resource Management Amendment Act 1993 (1993 No 65) and subsection (4)(b) was amended, as from 7 July 1993, by section 10(5) of the same amending Act by inserting the word "shell,".

Subsection (4)(a) was substituted, as from 17 December 1997, by section 4(3) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (4)(a) was repealed, as from 1 January 2005, by section 5 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subsection (5) was inserted, as from 7 July 1993, by section 10(6) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (6) was inserted, as from 20 August 1998, by section 4 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (6) was amended, as from 20 August 1998, by section 4(4) Resource Management Amendment Act 1997 (1997 No 104) by inserting the words "or 15B". *See* clause 2 Resource Management Amendment Act 1997 Commencement Order 1998 (SR 1998/210).

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 in a regional coastal plan; and

(b) if the coastal marine area is vested in the Crown or a regional council, unless expressly authorised by a coastal permit.

(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) However, an activity that is not an aquaculture activity may not be undertaken in an aquaculture management area, except to the extent that the activity is compatible with aquaculture activities.

Sections 12A and 12B were inserted, as from 1 January 2005, by section 6 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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.

Sections 12A and 12B were inserted, as from 1 January 2005, by section 6 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 rule in a regional plan and in any relevant proposed regional plan or a resource consent.

(2) No person may—

(a) Enter or pass across the bed of any river or lake; or

(b) Disturb, remove, damage, or destroy any plant or part of any plant (whether exotic or indigenous) or the habitats of any such plants or of animals in, on, or under the bed of any lake or river—

in a manner that contravenes a rule in a regional plan or proposed regional plan unless that activity is—

(c) Expressly allowed by a resource consent granted by the regional council responsible for the plan; or

(d) Allowed by section 20A (certain existing lawful uses allowed).

(3) This section does not apply to any use of land in the coastal marine area.

(4) Nothing in this section limits section 9.

Subsection (1) was substituted, as from 7 July 1993, by section 11 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2)(d) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "20A" for the expression "20". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Water

14 Restrictions relating to water

(1) No person may take, use, dam, or divert any—

(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 any geothermal water—

unless the taking, use, damming, or diversion is allowed by subsection (3).

(2) No person may—

(a) Take, use, dam, or divert any open coastal water; or

(b) Take or use any heat or energy from any open coastal water,—

in a manner that contravenes a rule in a regional plan or a proposed regional plan unless expressly allowed by a resource consent or allowed by section 20A (certain existing lawful activities allowed).

(3) A person is not prohibited by subsection (1) from taking, using, damming, or diverting any water, heat, or energy if—

(a) The taking, use, damming, or diversion is expressly allowed by a rule in a regional plan and in any relevant proposed regional plan 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 fire-fighting purposes.

Subsection (2) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "20A" for the expression "20". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3)(a) was amended, as from 7 July 1993, by section 12 Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "and in any relevant proposed regional plan".

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 rule in a regional plan and in any relevant proposed regional plan, a resource consent, or regulations.

(2) No person may discharge any contaminant into the air, or into or onto land, from—

(a) Any place; or

(b) Any other source, whether moveable or not,—

in a manner that contravenes a rule in a regional plan or proposed regional plan unless the discharge is expressly allowed by a resource consent, or regulations, or allowed by section 20A (certain existing lawful activities allowed).

(3) This section shall not apply to anything to which section 15A or section 15B applies.

Subsection (1) was amended, as from 7 July 1993, by section 13 Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "in a regional plan and in any relevant proposed regional plan" for the words "of a regional plan".

Subsection (2) was amended, as from 17 December 1997, by section 5 Resource Management Amendment Act 1997 (1997 No 104) by inserting the words ", or regulations,". *See* section 78 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "20A" for the expression "20". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was inserted, as from 20 August 1998, by section 5 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

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.

Sections 15A to 15C were inserted, as from 20 August 1998, by section 6 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

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

Sections 15A to 15C were inserted, as from 20 August 1998, by section 6 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Section 15B was substituted, as from 20 August 1998, by section 6 Resource Management Amendment Act 1997 (1997 No 104). *See* clause 2 Resource

Management Amendment Act 1997 Commencement Order 1998 (SR 1998/210).

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.

Sections 15A to 15C were inserted, as from 20 August 1998, by section 6 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

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) Subsection (1) does not limit the right of any local authority or consent authority to prescribe noise emission standards in plans made, or resource consents granted, for the purposes of any of sections 9, 12, 13, 14, 15, 15A, and 15B.

Subsection (1) was amended, as from 7 July 1993, by section 14 Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "the water covering".

Subsection (2) was amended, as from 20 August 1998, by section 7 Resource Management Amendment Act 1994 (1994 No 105) by substituting the expression "15, and 15A" for the expression "or 15". *See* clause 2 Resource

Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (2) was amended, as from 20 August 1998, by section 7 Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "15A, and 15B" for the expression "and 15A". *See* clause 2 Resource Management Amendment Act 1997 Commencement Order 1998 (SR 1998/210).

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 that person, whether or not the activity is in accordance with a rule in a plan, a resource consent,a designation, section 10, section 10A, or section 20A

(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).

Subsection (1) was amended, as from 7 July 1993, by section 15(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "section 10, section 10A, or section 20" for the words "section 10 (certain existing uses protected), or section 20 (certain existing lawful activities allowed)".

Subsection (1) was amended, as from 1 August 2003, by section 7 Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "a

designation," after the words "resource consent,". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "20A" for the expression "20". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4) was inserted, as from 7 July 1993, by section 15(2) Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsections (3)(a) and (b), and (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Recognised customary activities

This heading was inserted, as from 17 January 2005, by section 5 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

17A Recognised customary activity may be exercised in accordance with any controls

(1) A recognised customary activity may be carried out despite—

(a) sections 9 to 17; or

(b) a rule in a plan or a proposed plan.

(2) Subsection (1) applies to a recognised customary activity only if that activity is carried out—

(a) in accordance with any controls imposed by the Minister of Conservation under Schedule 12; and

(b) by any member of the whanau, hapu, or iwi or of the group, as the case may be, entitled to do so under section 52 or section 76 of the Foreshore and Seabed Act 2004; or

(c) by a person authorised by the holder of the customary rights order to carry out the activity under section 53(1)(a) or section 77(1)(a) of the Foreshore and Seabed Act 2004.

Sections 17A and 17B were inserted, as from 17 January 2005, by section 5 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

17B Adverse effects assessment

(1) For the purposes of any controls that may be imposed on a recognised customary activity under Part 1 of Schedule 12, a

regional council must, if directed by the Minister of Conservation at any time, and may of its own initiative in the circumstances set out in clause 6(2) of Schedule 12,—

(a) carry out an adverse effects assessment of the effects on the environment of a recognised customary activity in its region; and

(b) complete, and give to the Minister an adverse effects report based on that assessment.

(2) Part 2 of Schedule 12 applies to the assessment carried out and to the report prepared under this section.

(3) In this section, **regional council** includes the Chatham Islands Council.

Sections 17A and 17B were inserted, as from 17 January 2005, by section 5 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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).

Subsection (1) was substituted, as from 20 August 1998, by section 8 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Effect of certain changes to plans

19 Certain rules in proposed plans to be operative

(1) A rule in a proposed plan is to be treated as if it is operative and any previous rule is inoperative if the time for making submissions or lodging appeals on the rule has expired and—

(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.

(2) Every reference in this Act or in regulations to a plan or an operative plan is to be treated as including a rule in a proposed plan that is operative in accordance with subsection (1).

Subsection (1)(b)(ii) was amended, as from 2 September 1996, by section 5(1) Resource Management Amendment Act 1996 (1996 No 160) by inserting the words "or rejected".

Subsection (2) was inserted, as from 2 September 1996, by section 5(2) Resource Management Amendment Act 1996 (1996 No 160).

Sections 19 to 20A were substituted, as from 1 August 2003, by section 8 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

20 Certain rules in proposed plans not to have effect

(1) A local authority may, before publicly notifying a proposed plan, resolve that any rule in the plan does not have effect until the plan becomes operative.

(2) Public notification of the plan must include the resolution.

(3) If the resolution is rescinded, the local authority must, as soon as possible, publicly notify—

(a) the rescission; and

(b) the resolution to which it relates; and

(c) the date of the rescission.

(4) A rule to which a rescinded resolution relates has effect as a rule in the plan for all purposes on and from the day after the date on which the rescission is publicly notified.

(5) A reference in this Act (except in Schedule 1) and in any regulations made under this Act to a proposed plan excludes a rule in the plan if—

(a) the rule is subject to a resolution under subsection (1); and

(b) the resolution has not been rescinded.

Subsection (1) was amended, as from 7 July 1993, by section 16(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting after the expression "9" the expression "(3)", and by inserting in paragraph (b) the words "by a rule in the proposed regional plan".

Subsection (1) was amended, as from 17 December 1997, by section 8(1) Resource Management Amendment Act 1997 (1997 No 104) by substituting the words "that formerly was a permitted activity or which otherwise could have been lawfully carried out without a resource consent as a result of a rule in a

proposed plan" for the words "restricted by sections 9(3), 12(3), 13(2), 14(2), or 15(2) that contravenes a rule in a proposed regional plan". *See* section 78 of that Act as to the transitional provisions.

Subsection (2) was substituted, as from 7 July 1993, by section 16(2) Resource Management Amendment Act 1993 (1993 No 65).

Sections 19 to 20A were substituted, as from 1 August 2003, by section 8 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

20A Certain existing lawful activities allowed

(1) If, as a result of a rule in a proposed regional plan being notified, an activity requires a resource consent, the activity may continue until the rule becomes operative if,—

(a) before the rule was notified, 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 was notified; 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 was notified.

(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 was inserted, as from 26 March 2002, by section 5 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

Sections 19 to 20A were substituted, as from 1 August 2003, by section 8 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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

Where any enforcement officer has reasonable grounds to believe that a person is breaching or has breached any of the obligations under this Part, the enforcement officer may direct that person to—

(a) Give his or her name and address; and

(b) Give the name and address and whereabouts of any other person on whose behalf the person is breaching or has breached the obligations under this Part.

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) the making of decisions under section 141A on whether and, if relevant, how to intervene in a matter:

(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, and the functions, powers, and duties of the Hazards Control Commission under Part 13:

(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.

Paragraph (b) was amended, as from 10 August 2005, by section 6(1) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "national environmental standards" for the words "regulations under section 43". *See* sections 131 to 135 of that Act as to the transitional provisions.

Paragraph (c) was substituted, as from 10 August 2005, by section 6(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Paragraph (ga) was inserted, as from 7 July 1993, by section 17 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; 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; 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 1 or both of those sections.

Section 24A was inserted, as from 10 August 2005, by section 7 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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, one 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 was inserted, as from 10 August 2005, by section 8 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 the Crown Bank Account or such other account as may be approved by the Minister of Finance.

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.

Subsection (2) was inserted, as from 7 July 1993, by section 18 Resource Management Amendment Act 1993 (1993 No 65).

Section 27 was substituted, as from 10 August 2005, by section 9 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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) The making of decisions on applications for coastal permits in relation to restricted coastal activities:

(d) The monitoring of the effect and implementation of New Zealand coastal policy statements and coastal permits granted by the Minister of Conservation:

(e) carrying out his or her functions under Schedule 12.

Paragraph (d) was substituted, as from 7 July 1993, by section 19(1) Resource Management Amendment Act 1993 (1993 No 65).

Paragraph (e) was repealed, as from 7 July 1993, by section 19(2) Resource Management Amendment Act 1993 (1993 No 65).

Paragraph (e) was inserted, as from 17 January 2005, by section 6 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

28A Information to be supplied to Minister of Conservation

Any regional council requested by the Minister of Conservation to supply information to the Minister relating to the monitoring by the regional council of—

(a) Coastal permits granted by the Minister; or

(b) Its regional coastal plan; or

(c) the exercise of a recognised customary activity in its region—

shall be under a duty to supply the information as soon as reasonably practicable

Section 28A was inserted, as from 7 July 1993, by section 20 Resource Management Amendment Act 1993 (1993 No 65).

Paragraph (b) was amended, as from 17 January 2005, by section 7 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by inserting the expression "; or". *See* sections 40 to 43 of that Act.

Paragraph (c) was inserted, as from 17 January 2005, by section 7 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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) The recommendation of the issue, change, or revocation of a national policy statement or a New Zealand coastal policy statement under sections 46, 53, or 57:

(b) The approval of a regional coastal plan under clause 19 of Schedule 1:

(c) the making of decisions under section 141A on whether and, if relevant, how to intervene in a matter:

(d) The recommendation of the approval of an applicant as a requiring authority under section 167 or as a heritage protection authority under section 188:

(e) The recommendation of the issue of a water conservation order under section 214:

(f) The certification of any work or activity under section 4:

(g) The power of the Minister for the Environment to appoint under section 25 persons to exercise or perform functions, powers, or duties in place of a local authority:

(ga) making a decision on any controls to be imposed under Schedule 12 on a recognised customary activity:

(h) 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.

Subsection (1)(c) was substituted, as from 10 August 2005, by section 10 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(ga) was inserted, as from 17 January 2005, by section 8 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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 on land of the Crown or land vested in the regional council, that is foreshore or seabed, and the extraction of sand, shingle, shell, or other natural material from that land:

(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).

Subsection (1)(c)(iiia) was inserted, as from 1 August 2003, by section 9(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(ca) was inserted, as from 10 August 2005, by section 11(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(d)(ii) was substituted, as from 7 July 1993, by section 21(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(d)(iva) was inserted, as from 20 August 1998, by section 9 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (1)(fa) and (fb) was inserted, as from 10 August 2005, by section 11(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(ga) was inserted, as from 1 August 2003, by section 9(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(gb) was inserted, as from 10 August 2005, by section 11(3) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 7 July 1993, by section 21(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "under subparagraph (i) or subparagraph (ii) or subparagraph (vii) of subsection (1)(d)" for the expression "in subsection (1)(d)(i)".

Subsection (2) was amended, as from 1 October 1996, by section 316(1) Fisheries Act 1996 (1996 No 88) by substituting the words "use, conserve, enhance, or develop any fisheries resources controlled under the Fisheries Act 1996" for the words "enhance, protect, allocate, or manage any fishery controlled by the Fisheries Act 1983". *See* clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Subsection (2) was amended, as from 23 June 1998, by section 37 Fisheries (Remedial Issues) Amendment Act 1998 (1998 No 67) by omitting the word "conserve,".

Subsection (2) was substituted, as from 1 January 2005, by section 7 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subsection (3) was inserted, as from 1 January 2005, by section 7 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subsection (4) was inserted, as from 10 August 2005, by section 11(4) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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)

(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.

Paragraph (b) was substituted, as from 7 July 1993, by section 22 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(b) was substituted, as from 1 August 2003, by section 10(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(b)(iia) was inserted, as from 10 August 2005, by section 12 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(c) was repealed, as from 1 August 2003, by section 10(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2) was inserted, as from 1 August 2003, by section 10(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 district 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 was inserted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

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 pol-

icy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by—

(a) the Minister, for a national policy statement or a national environmental standard; 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 Part 2 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 Part 2 of the 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 the 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.

Subsection (2) was substituted, as from 9 December 1994, by section 2(1) Resource Management Amendment Act (No 2) 1994 (1994 No 139). *See* section 3 of that Act as to the transitional provisions.

Subsection (3) was substituted, as from 7 July 1993, by section 23 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was substituted, as from 9 December 1994, by section 2(1) Resource Management Amendment Act (No 2) 1994 (1994 No 139). *See* section 3 of that Act as to the transitional provisions.

Subsections (4) and (5) were inserted, as from 9 December 1994, by section 2(1) Resource Management Amendment Act (No 2) 1994 (1994 No 139). *See* section 3 of that Act as to the transitional provisions.

Section 32 was substituted, as from 1 August 2003, by section 11 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(a) was amended, as from 10 August 2005, by section 13(1) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "a national environmental standard" for the words "regulations made under section 43". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (3A) was inserted, as from 10 August 2005, by section 13(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (4) was amended, as from 10 August 2005, by section 13(3) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "the examinations referred to in subsections (3) and (3A)" for the words "this examination". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 state-

ment, from taking into account the matters stated in section 32.

Section 32A was inserted, as from 1 August 2003, by section 11 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

33 Transfer of powers

(1) A local authority may transfer any one 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 any local authority, iwi authority, board of a foreshore and seabed reserve, Government department, statutory authority, and joint committee set up for the purposes of section 80.

(3)

(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)

(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.

Subsection (1) was substituted, as from 1 August 2003, by section 12(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2) was amended, as from 17 January 2005, by section 9 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by inserting the words "board of a foreshore and seabed reserve," after the words "iwi authority,". *See* sections 40 to 43 of that Act.

Subsection (3) was repealed, as from 1 August 2003, by section 12(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4)(a) was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsection (5) was repealed, as from 1 August 2003, by section 12(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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.

(4)

(5)

(6)

(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.

Subsections (1) and (2) were amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "Local Government Act 2002" for the words "Local Government Act 1974". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsection (3) was substituted, as from 1 August 2003, by section 13 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4) was repealed, as from 1 August 2003, by section 13 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5) was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsections (5) and (6) were repealed, as from 1 August 2003, by section 13 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 policy statement or plan:

(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)

(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 was inserted, as from 1 August 2003, by section 14 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was repealed, as from 10 August 2005, by section 14 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

(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 recognised customary activity in its region, including any controls imposed under Schedule 12 on that activity,—

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 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 93 to 94C; 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) Records of all extensions of time periods and waivers granted by it under section 37 in relation to applications under section 10 (which relates to existing uses), section 125 (which relates to lapsing of consents), and section 184 (which relates to lapsing of designations) during the preceding 5 years; and

(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 customary rights order relating to 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.

Subsection (2)(b) was substituted, as from 1 August 2003, by section 15(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(d) was amended, as from 17 January 2005, by section 10(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by inserting the expression "; and". *See* sections 40 to 43 of that Act.

Subsection (2)(e) was inserted, as from 17 January 2005, by section 10(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subsection (2A) was inserted, as from 1 August 2003, by section 15(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5)(aa) was inserted, as from 10 August 2005, by section 15 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (5)(g) was substituted, as from 1 August 2003, by section 15(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5)(ga) to (5)(gc) were inserted, as from 1 August 2003, by section 15(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5)(ja) was inserted, as from 7 July 1993, by section 24 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (5)(jb) was inserted, as from 17 January 2005, by section 10(2) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subsection (6) was inserted, as from 17 January 2005, by section 10(3) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

35A Duty to keep records about iwi and hapu

(1) For the purposes of 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; 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 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.

(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, 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.

Section 35A was inserted, as from 10 August 2005, by section 16 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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:

(b) Charges payable by applicants for resource consents, for the carrying out by the local authority 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 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):

(d) Charges payable by requiring authorities and heritage protection authorities, for the carrying out by the local authority 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.

Subsection (1)(b) was amended, as from 10 August 2005, by section 17(1) Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "and existing use certificates" after the word "compliance". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(c) was amended, as from 10 August 2005, by section 17(2) Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "and existing use certificates" after the word "compliance". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(ca) was inserted, as from 1 January 2005, by section 8 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subsection (1)(cb) was inserted, as from 10 August 2005, by section 17(3) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsection (3A) was inserted, as from 1 August 2003, by section 16 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (6) was amended, as from 10 August 2005, by section 17(4) Resource Management Amendment Act 2005 (2005 No 87) by substituting the expression "357B to" for the expression "357 and". *See* sections 131 to 135 of that Act as to the transitional provisions.

Duties of local authorities and applicants

This heading was inserted, as from 10 August 2005, by section 18 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 36A to 36E were inserted, as from 10 August 2005, by section 18 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Powers and duties of local authorities and other public authorities

This heading was inserted, as from 10 August 2005, by section 18 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 36A to 36E were inserted, as from 10 August 2005, by section 18 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 36A to 36E were inserted, as from 10 August 2005, by section 18 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

36D Effect of joint management agreement

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

Sections 36A to 36E were inserted, as from 10 August 2005, by section 18 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 36A to 36E were inserted, as from 10 August 2005, by section 18 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Subsection (1) was amended, as from 7 July 1993, by section 25(1) Resource Management Amendment Act 1993 (1993 No 65) by adding the words "whether or not the time period has expired".

Subsection (5A) was inserted, as from 7 July 1993, by section 25(2) Resource Management Amendment Act 1993 (1993 No 65).

Section 37 was substituted, as from 1 August 2003, by section 17 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 service, 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) 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.

Sections 37A and 37B were inserted, as from 1 August 2003, by section 17 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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, for a direction made under section 141C:

(b) the board of inquiry appointed under section 146, for all matters while carrying out its functions:

(c) a special tribunal appointed under section 202, for all matters while carrying out its functions.

(d) the Minister of Conservation, for all matters while carrying out his or her functions under Schedule 12.

Sections 37A and 37B were inserted, as from 1 August 2003, by section 17 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraph (a) was amended, as from 10 August 2005, by section 19 Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "made under section 141C" for the words "given under section 140". *See* sections 131 to 135 of that Act as to the transitional provisions.

Paragraph (d) was inserted, as from 17 January 2005, by section 11 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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 security guard's licence issued under section 26 of the Private Investigators and Security Guards Act 1974; 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 coastal permit issued by that Minister:

(b) Those parts of a coastal marine area which a regional coastal plan states as having significant conservation value and in respect of which that Minister is the consent authority.

(c) compliance with controls imposed under Schedule 12 on a recognised customary activity.

(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.

Subsection (1)(b) was amended, as from 17 December 1997, by section 9(1) Resource Management Amendment Act 1997 (1997 No 104) by inserting

the words "or the Maritime Safety Authority of New Zealand,". *See* section 78 of that Act as to the transitional provisions.

Subsection (1)(b) was amended, as from 1 July 2005, by section 11(3) Maritime Transport Amendment Act 2004 (2004 No 98) by substituting the words "Maritime New Zealand" for the words "the Maritime Safety Authority of New Zealand".

Subsection (2) was amended, as from 7 July 1993, by section 26 Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "sections 327 and 328 (which relate to excessive noise)" for the words "section 327 (which relates to excessive noise)".

Subsection (2)(b) was substituted, as from 17 December 1997, by section 9(2) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 17 January 2005, by section 12(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by substituting the words "1 or more" for the words "either or both". *See* sections 40 to 43 of that Act.

Subsection (3)(c) was inserted, as from 17 January 2005, by section 12(2) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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, 146, 202, or 357C, holds a hearing in relation to—

(a) A proposed policy statement, plan, or change or variation to a policy statement or plan; or

(b) An application for a resource consent; or

(c) An application for a review of a resource consent; or

(d) An application to change any condition of a resource consent; or

(e) An application that has been called-in under section 141B(1)(a); or

(f) A requirement for 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.

Subsection (1) was amended, as from 7 July 1993, by section 27(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "202, or 357" for the expression "or 202". Subsection (1)(a) was amended by section 27(2) of the same amending Act by inserting the words "or variation".

Subsection (1) was amended, as from 10 August 2005, by section 20(1) Resource Management Amendment Act 2005 (2005 No 87) by inserting the expression "34A," after the expression "34,". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1) was amended, as from 10 August 2005, by section 20(2) Resource Management Amendment Act 2005 (2005 No 87) by substituting the expression "357C" for the expression "357". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(e) was amended, as from 10 August 2005, by section 20(3) Resource Management Amendment Act 2005 (2005 No 87) by adding the words "under section 141B(1)(a)". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 was inserted, as from 10 August 2005, by section 21 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 notified under section 93; 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 was inserted, as from 9 August 2006, by section 22(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (4) was inserted, as from 9 August 2007, by section 22(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 was inserted, as from 10 August 2005, by section 23 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

40 Persons who may be heard at a hearing

(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 consent authority may nevertheless proceed with the hearing, if it considers it fair and reasonable to do so.

Subsection (3) was inserted, as from 7 July 1993, by section 28 Resource Management Amendment Act 1993 (1993 No 65).

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, 146, 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.

Subsection (1) was amended, as from 10 August 2005, by section 24 Resource Management Amendment Act 2005 (2005 No 87) by inserting the expression "34A," after the expression "34,". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (4) was inserted, as from 7 July 1993, by section 29 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 section 41C, after considering whether the scale and significance of the hearing makes the exercise of the power appropriate.

Sections 41A to 41C were inserted, as from 10 August 2005, by section 25(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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, the authority must hold the hearing within 40 working days of the closing date for submissions.

Sections 41A to 41C were inserted, as from 10 August 2005, by section 25(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 copies of the report to the applicant and any person who made a submission.

(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.

Sections 41A to 41C were inserted, as from 10 August 2005, by section 25(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsections (7) to (9) were inserted, as from 9 August 2007, by section 25(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 any community board, board of inquiry, public body, special tribunal, or any person given authority to conduct hearings under section 33 or section 34 or section 34A or section 117 or section 146 or section 202.

Subsections (4) and (5) were amended, as from 2 September 1996, pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160) by substituting the words "Environment Court" for the words "Planning Tribunal".

Subsection (6)(b) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "or section 34A" after the expression "section 34". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Reports

The heading "Reports" was inserted, as from 7 July 1993, by section 30 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 defined in section 42(6), 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.

(2) Any report prepared under subsection (1) may be considered at any hearing conducted by the local authority.

(3) A copy of any written report prepared under subsection (1) shall be sent, so that it is received at least 5 working days before the hearing, to the applicant and any person who made a submission and stated they wished to be heard at the hearing.

(4) The local authority may waive compliance with 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 sent a copy of the report under subsection (3).

Section 42A was inserted, as from 7 July 1993, by section 30 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was substituted, as from 10 August 2005, by section 26(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 17 December 1997, by section 10 Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "5" for the expression "2". *See* section 78 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 10 August 2005, by section 26(2) Resource Management Amendment Act 2005 (2005 No 87) by omitting the words ", or the person who made a requirement for a designation or heritage order (as the case may be),". *See* sections 131 to 135 of that Act as to the transitional provisions.

Part 5
Standards, policy statements, and plans

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.

Subsection (2) was amended, as from 7 July 1993, by section 31 Resource Management Amendment Act 1993 (1993 No 65) by omitting the expression "and (3)".

Section 43 was substituted, as from 20 May 2003, by section 18 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(a) was amended, as from 10 August 2005, by section 27 Resource Management Amendment Act 2005 (2005 No 87) by inserting the expression "section 11," after the expression "section 9,". *See* sections 131 to 135 of that Act as to the transitional provisions.

43A Additional powers to implement 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 1 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 1 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.

Sections 43A to 43E were inserted, as from 20 May 2003, by section 18 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1) was amended, as from 10 August 2005, by section 28(1) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "National environmental standards" for the words "Regulations made under section 43". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(b) was substituted, as from 10 August 2005, by section 28(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(c) and (d) was amended, as from 10 August 2005, by section 28(3) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "a national environmental standard" for the words "the regulations". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(e) was amended, as from 10 August 2005, by section 28(4)(a) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "a national environmental standard" for the words "the regulations". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(e) was amended, as from 10 August 2005, by section 28(4)(b) Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "standard" for the word "regulation" in both places it appears. *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(f) was amended, as from 10 August 2005, by section 28(5) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "a national environmental standard" for the words "the regulations". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was substituted, as from 10 August 2005, by section 28(6) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsections (3) to (6) were inserted, as from 10 August 2005, by section 28(6) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 resource consent that exists when a national environmental standard is made prevails over the standard. This subsection does not apply to water, coastal, or discharge permits.

(6) A water, coastal, or discharge permit that exists when a national environmental standard is made 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) A national environmental standard that exists before the hearing of an application for a resource consent begins prevails over a resource consent granted as a result of the application.

(8) A national environmental standard that prescribes transitional provisions relating to a resource consent application notified before the commencement of the standard prevails over a resource consent granted as a result of the application to the extent (if any) specified in the standard.

(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.

Sections 43A to 43E were inserted, as from 20 May 2003, by section 18 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Sections 43B to 43E were substituted, as from 10 August 2005, by section 29 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 43A to 43E were inserted, as from 20 May 2003, by section 18 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Sections 43B to 43E were substituted, as from 10 August 2005, by section 29 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 43A to 43E were inserted, as from 20 May 2003, by section 18 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Sections 43B to 43E were substituted, as from 10 August 2005, by section 29 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 43A to 43E were inserted, as from 20 May 2003, by section 18 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Sections 43B to 43E were substituted, as from 10 August 2005, by section 29 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 43F and 43G were inserted, as from 10 August 2005, by section 29 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

43G Incorporation of material by reference in national environmental standards

A national environmental standard may incorporate material by reference under Schedule 1AA.

Sections 43F and 43G were inserted, as from 10 August 2005, by section 29 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

44 Restriction on power to make national environmental standards

The Minister must not recommend to the Governor-General the making of any national environmental standard unless the Minister has—

(a) notified 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) established 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) publicly notified that report and recommendation.

Section 44 was substituted, as from 20 May 2003, by section 18 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

The heading to section 44 was amended, as from 10 August 2005, by section 30(1) Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "**regulations prescribing**". *See* sections 131 to 135 of that Act as to the transitional provisions.

Section 44 was amended, as from 10 August 2005, by section 30(2)(a) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "national environmental standard" for the words "regulations under section 43". *See* sections 131 to 135 of that Act as to the transitional provisions.

Section 44 was amended, as from 10 August 2005, by section 30(3) Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "and iwi authorities" after the word "public" in both places it appears. *See* sections 131 to 135 of that Act as to the transitional provisions.

Paragraph (a)(i) was amended, as from 10 August 2005, by section 30(2)(b) Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "standard" for the word "regulations". *See* sections 131 to 135 of that Act as to the transitional provisions.

Paragraph (a)(ii) was amended, as from 10 August 2005, by section 30(2)(c) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "standard is" for the words "regulations are". *See* sections 131 to 135 of that Act as to the transitional provisions.

Paragraph (b)(i) and (ii) was amended, as from 10 August 2005, by section 30(2)(b) Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "standard" for the word "regulations". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 one 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.

Subsection (1) was amended, as from 20 May 2003, by section 19 Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "objectives and policies for" for the words "policies on". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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.

Sections 46 and 47 were substituted, as from 20 May 2003, by section 20 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraph (a) was amended, as from 10 August 2005, by section 31 Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "the relevant iwi authorities and" after the words "comments from". *See* sections 131 to 135 of that Act as to the transitional provisions.

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) 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) The Minister must not choose a process established under subsection (1)(b) if the proposed national policy statement includes a provision of the kind described in section 55(2A)(b).

(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 was inserted, as from 10 August 2005, by section 32 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

46B Incorporation of material by reference in national policy statements

A national policy statement may incorporate material by reference under Schedule 1AA.

Section 46B was inserted, as from 10 August 2005, by section 33 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 46 and 47 were substituted, as from 20 May 2003, by section 20 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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).

The heading to section 48 was amended, as from 20 May 2003, by section 21(1) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "proposed national policy statement and" after the word "of". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1) was amended, as from 20 May 2003, by section 21(2) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "proposed national policy statement and the" after the words "notice of the". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(ab) was inserted, as from 20 May 2003, by section 21(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(b) was amended, as from 20 May 2003, by section 21(4) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "proposed national policy statement" for the word "application". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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) A person who made a submission has the right to be heard at the hearing.

Section 50 was substituted, as from 7 July 1993, by section 32 Resource Management Amendment Act 1993 (1993 No 65).

Sections 50 to 52 were substituted, as from 20 May 2003, by section 22 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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

(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.

Subsection (1) was substituted, as from 7 July 1993, by section 33 Resource Management Amendment Act 1993 (1993 No 65).

Sections 50 to 52 were substituted, as from 20 May 2003, by section 22 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

52 Consideration of recommendations and approval 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 (but need not) make any changes to the proposed national policy statement that he or she thinks fit.

(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 of the Minister's decision on the recommendations; and

(d) present a copy of the statement to the House of Representatives.

Sections 50 to 52 were substituted, as from 20 May 2003, by section 22 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

53 Changes to or review or revocation of national policy statements

The Minister may review, change, or revoke a national policy statement after using 1 of the processes referred to in section 46A(1) in relation to the preparation of a national policy statement.

Section 53 was amended, as from 10 August 2005, by section 34 Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "using

1 of the processes referred to in section 46A(1)" for the words "complying with the same procedure as is set out in sections 46 to 52". *See* sections 131 to 135 of that Act as to the transitional provisions.

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—

(a) amend a document to give effect to a provision in a national policy statement that affects the document; and

(b) make the amendment—

(i) as soon as practicable; or

(ii) within the time specified in the national policy statement; or

(iii) before the occurrence of an event specified in the national policy statement.

(2A) A national policy statement—

(a) must state whether a local authority is required to use the process set out in Schedule 1 to amend a document under subsection (2); and

(b) may direct that specific provisions are to be included in a document, without notification or hearing, under clause 16 of Schedule 1.

(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 was substituted, as from 20 May 2003, by section 23 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsections (1) and (2) were substituted, as from 10 August 2005, by section 35 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2A) was inserted, as from 10 August 2005, by section 35 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 one New Zealand coastal policy statement prepared and recommended by the Minister of Conservation using 1 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.

Subsection (1) was amended, as from 10 August 2005, by section 36 Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "using 1 of the processes referred to in section 46A(1), as if references in sections 46 to 52" for the words "in the manner set out in sections 46 to 52 as if references in those sections". *See* sections 131 to 135 of that Act as to the transitional provisions.

58 Contents of New Zealand coastal policy statements

A New Zealand coastal policy statement may state objectives and policies about any one 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 land of the Crown in the coastal marine area:

(e) The matters to be included in any or all regional coastal plans in regard to the preservation of the natural character of the coastal environment, including the specific circumstances in which the Minister of Conservation will decide resource consent applications relating to—

  (i) Types of activities which have or are likely to have a significant or irreversible adverse effect on the coastal marine area; or

  (ii) 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 recognised customary activities:

(h) Any other matter relating to the purpose of a New Zealand coastal policy statement.

Section 58 was amended, as from 10 August 2005, by section 37 Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "objectives and" after the word "state". *See* sections 131 to 135 of that Act as to the transitional provisions.

Paragraphs (ga) and (gb) were inserted, as from 25 November 2004, by section 13 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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 was inserted, as from 10 August 2005, by section 38 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 one 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)

(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)

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) A regional council, when preparing or changing a regional policy statement, must—

(a) take into account any relevant planning document recognised by an iwi authority, and lodged with the council, to the extent that its content has a bearing on resource management issues of the region; and

(b) recognise and provide for the management plan for a foreshore and seabed reserve located in whole or in part within its region, once the management plan has been lodged with the council.

(3) In preparing or changing any regional policy statement, a regional council must not have regard to trade competition.

Subsection (2)(a)(ii) was repealed, as from 1 August 2003, by section 24(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(a)(iia) was inserted, as from 1 July 1993, by section 118(2) Historic Places Act 1993 (1993 No 38).

Subsection (2)(a)(iii) was substituted, as from 1 October 1996, by section 316(1) Fisheries Act 1996 (1996 No 88). *See* clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Subsection (2)(a)(iv) was repealed, as from 1 August 2003, by section 24(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2A) was inserted, as from 1 August 2003, by section 24(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2A) was substituted, as from 17 January 2005, by section 14 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subsection (3) was inserted, as from 17 December 1997, by section 11 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions. The section title was consequentially amended to include the words "(policy statements)".

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—

(i) iwi authorities in the region; and

(ii) the board of a foreshore and seabed reserve, to the extent that those issues relate to that reserve; 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.

Subsection (1)(b) was substituted, as from 17 January 2005, by section 15 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subsection (1)(ha) was inserted, as from 7 July 1993, by section 34(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(ha) was amended, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30) by omitting the words "the regional council shall retain primary responsibility for the hazard or hazardous substance; and". *See* Parts 11 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

Subsection (1)(ha)(iii) and (iv) was inserted, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

Subsection (1)(i) was amended, as from 7 July 1993, by section 34(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "(ha)" for the expression "(h)".

Section 62 was substituted, as from 1 August 2003, by section 25 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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, one 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.

Subsection (1) was substituted, as from 7 July 1993, by section 35 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was amended, as from 1 January 2005, by section 9(1) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by inserting the words "and Schedule 1A".

Subsection (4) was amended, as from 1 January 2005, by section 9(2) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by inserting the words "and Schedule 1A".

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 coastal marine area (relating to land of the Crown in the coastal marine area or land in the coastal marine area vested in the regional council) 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 any person occupying the coastal marine area if the person is carrying out a recognised customary activity in accordance with section 17A(2).

(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 was inserted, as from 17 December 1997, by section 12 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (4A) was inserted, as from 17 January 2005, by section 16 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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) 1 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.

Subsection (1) was substituted, as from 1 August 2003, by section 26 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1) was amended, as from 10 August 2005, by section 39(1) Resource Management Amendment Act 2005 (2005 No 87) by substituting the expression "(ca), (e), (f), (fa), (fb), (g), or (ga)" for the expression "(e), (f), (g), or (ga)". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1A) was inserted, as from 10 August 2005, by section 39(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was substituted, as from 1 August 2003, by section 26 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5) was amended, as from 7 July 1993, by section 36 Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "by the regional council".

Subsections (6) and (7) were inserted, as from 10 August 2005, by section 39(3) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

66 Matters to be considered by regional council

(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 land of the Crown in the coastal marine area; and

(c) Any—

(i) Management plans and strategies prepared under other Acts; and

(ii)

(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)

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) A regional council, when preparing or changing a regional plan, must—

(a) take into account any relevant planning document recognised by an iwi authority and lodged with the

council, to the extent that its content has a bearing on resource management issues of the region; and

(b) recognise and provide for the management plan for a foreshore and seabed reserve located in whole or in part within its region, once the management plan has been lodged with the council.

(3) In preparing or changing any regional plan, a regional council must not have regard to trade competition.

Subsection (1) was amended, as from 10 August 2005, by section 40(1) Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "a direction given under section 25A(1)," after the expression "Part 2,". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 10 August 2005, by section 40(2) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "section 67(3) and (4)" for the expression "section 67(2)". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2)(c)(ii) was repealed, as from 1 August 2003, by section 27(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(c)(iia) was inserted, as from 1 July 1993, by section 118(2) Historic Places Act 1993 (1993 No 38).

Subsection (2)(c)(iii) was substituted, as from 1 October 1996, by section 316(1) Fisheries Act 1996 (1996 No 88). *See* clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Subsection (2)(c)(iv) was repealed, as from 1 August 2003, by section 27(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2A) was inserted, as from 1 August 2003, by section 27(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2A) was substituted, as from 17 January 2005, by section 17 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subsection (3) was inserted, as from 17 December 1997, by section 13 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

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 was substituted, as from 1 August 2003, by section 28 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(b) was amended, as from 1 January 2005, by section 10(1) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by inserting the expression "; or".

Subsection (2)(c) was inserted, as from 1 January 2005, by section 10(2) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 67 was substituted, as from 10 August 2005, by section 41 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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)

(3B)

(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)

(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 ac-

tivity 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) If paragraph (b) of the definition of **contaminated land** applies, 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.

Subsection (1) was amended, as from 1 August 2003, by section 29(1) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "rules in a regional plan" for the words "in a regional plan rules which prohibit, regulate, or allow activities". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2A) was inserted, as from 7 July 1993, by section 37 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2A) was substituted, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72). *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Subsection (3) was amended, as from 7 July 1993, by section 37(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "provide for" for the word "specify".

Subsection (3) was amended, as from 1 August 2003, by section 29(2) Resource Management Amendment Act 2003 (2003 No 23) by omitting the words "; and rules may accordingly provide for permitted activities, controlled activities,

discretionary activities, non-complying activities, prohibited activities, and restricted coastal activities". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsections (3A) and (3B) were inserted, as from 7 July 1993, by section 37 Resource Management Amendment Act 1993 (1993 No 65).

Subsections (3A) and (3B) were repealed, as from 1 August 2003, by section 29(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4) was amended, as from 1 August 2003, by section 29(4) Resource Management Amendment Act 2003 (2003 No 23) by substituting the word "A" for the words "Notwithstanding subsection (3), a". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5)(e) was substituted, as from 1 August 2003, by section 29(5) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (6) was repealed, as from 17 December 1997, by section 14 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (7) was inserted, as from 7 July 1993, by section 37 Resource Management Amendment Act 1993 (1993 No 65).

Subsections (8) to (10) were inserted, as from 20 August 1998, by section 10 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (11) was inserted, as from 10 August 2005, by section 42 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

68A Aquaculture activities

[Repealed]

Section 68A was inserted, as from 26 March 2002, by section 6 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

Subsection (3) was inserted, as from 1 August 2003, by section 30 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Section 68A was repealed, as from 1 January 2005, by section 11(1) 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

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.

Sections 70A and 70B were inserted, as from 2 March 2004, by section 6 Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2). *See* sections 8 and 9 of that Act for transitional provisions relating to applications and rules made before 2 March 2004.

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.

Sections 70A and 70B were inserted, as from 2 March 2004, by section 6 Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2). *See* sections 8 and 9 of that Act for transitional provisions relating to applications and rules made before 2 March 2004.

The heading to section 70B was amended, as from 10 August 2005, by section 43(1) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "**national environmental standards**" for the words "**regulations made under section 43**". *See* sections 131 to 135 of that Act as to the transitional provisions.

Section 70B was amended, as from 10 August 2005, by section 43(2)(a) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "a national environmental standard is made" for the words "regulations are made under section 43". *See* sections 131 to 135 of that Act as to the transitional provisions.

Section 70B was amended, as from 10 August 2005, by section 43(2)(b) Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "standard" for the word "regulations" in both places where it appears. *See* sections 131 to 135 of that Act as to the transitional provisions.

71 Rules about esplanade reserves on reclamation

[Repealed]

Section 71 was repealed, as from 7 July 1993, by section 38 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 one 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) 1 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.

Subsection (1A) was inserted, as from 7 July 1993, by section 39 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1B) was inserted, as from 10 August 2005, by section 44(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsections (4) and (5) were inserted, as from 10 August 2005, by section 44(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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)

(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—

(a) 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 resource management issues of the district; and

(b) recognise and provide for the management plan for a foreshore and seabed reserve adjoining its district, once the management plan has been lodged with the territorial authority, to the extent that its contents have 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.

Subsection (1) was amended, as from 10 August 2005, by section 45(1) Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "a direction given under section 25A(2)," after the expression "Part 2,". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 10 August 2005, by section 45(2) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "section 75(3) and (4)" for the expression "section 75(2)". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2)(a) was substituted, as from 17 December 1997, by section 15(1) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (2)(b)(ii) was repealed, as from 1 August 2003, by section 31(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(b)(iia) was inserted, as from 1 July 1993, by section 118(2) Historic Places Act 1993 (1993 No 38).

Subsection (2)(b)(iii) was substituted, as from 1 October 1996, by section 316(1) Fisheries Act 1996 (1996 No 88). *See* clause 2 Fisheries Act Commencement Order (No 2) 1996 (SR 1996/255).

Subsection (2A) was inserted, as from 1 August 2003, by section 31(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2A) was substituted, as from 17 January 2005, by section 18 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subsection (3) was inserted, as from 17 December 1997, by section 15(2) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

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.

Subsection (2) was substituted, as from 17 December 1997, by section 16 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Section 75 was substituted, as from 1 August 2003, by section 32 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Section 75 was substituted, as from 10 August 2005, by section 46 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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)

(3B)

(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.

(5) If paragraph (b) of the definition of **contaminated land** applies, 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.

Subsection (1) was amended, as from 1 August 2003, by section 33(1) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "rules in a district plan" for the words "in its district plan rules which prohibit, regulate, or allow activities". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2A) was inserted, as from 7 July 1993, by section 40 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2A) was substituted, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72). *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Subsection (3) was amended, as from 7 July 1993, by section 40(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "provide for" for the word "specify".

Subsection (3) was amended, as from 1 August 2003, by section 33(2) Resource Management Amendment Act 2003 (2003 No 23) by omitting the words "; and rules may accordingly provide for permitted activities, controlled activities, discretionary activities, non-complying activities, and prohibited activities". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsections (3A) and (3B) were inserted, as from 7 July 1993, by section 40 Resource Management Amendment Act 1993 (1993 No 65).

Subsections (3A) and (3B) were repealed, as from 1 August 2003, by section 33(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4)(e) was substituted, as from 1 August 2003, by section 33(4) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5) was inserted, as from 10 August 2005, by section 47 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 in clause 5 of Part 2 of Schedule 2 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 was substituted, as from 7 July 1993, by section 41 Resource Management Amendment Act 1993 (1993 No 65).

Additional provisions for regional rules and district rules

This heading was inserted, as from 1 August 2003, by section 34 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

77A Power to include rules in plans

(1) A local authority may make rules describing an activity as an activity in section 77B.

(2) When an activity in a plan or proposed plan is described as an activity in section 77B, the requirements, restrictions, permissions, and prohibitions specified for that type of activity apply to that activity in that plan or proposed plan.

(3) The power to specify conditions in a plan or proposed plan is limited to conditions for the matters in section 108 or section 220.

Sections 77A to 77D were inserted, as from 1 August 2003, by section 34 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

77B Types of activities

(1) If an activity is described in this Act, regulations, or a plan or proposed plan as a permitted activity, a resource consent is not required for the activity if it complies with the standards, terms, or conditions, if any, specified in the plan or proposed plan.

(2) If an activity is described in this Act, regulations, or a plan or proposed plan as a controlled activity,—

(a) a resource consent is required for the activity; and

(aa) the consent authority must grant the resource consent, unless it has insufficient information to determine whether or not the activity is a controlled activity; and

(b) the consent authority must specify in the plan or proposed plan matters over which it has reserved control; and

(c) the consent authority's power to impose conditions on the resource consent is restricted to the matters that have been specified under paragraph (b); and

(d) the activity must comply with the standards, terms, or conditions, if any, specified in the plan or proposed plan.

(3) If an activity is described in this Act, regulations, or a plan or proposed plan as a restricted discretionary activity,—

(a) a resource consent is required for the activity; and

(b) the consent authority must specify in the plan or proposed plan matters to which it has restricted its discretion; and

(c) the consent authority's powers to decline a resource consent and to impose conditions are restricted to matters that have been specified under paragraph (b); and

(d) the activity must comply with the standards, terms, or conditions, if any, specified in the plan or proposed plan.

(4) If an activity is described in this Act, regulations, or a plan or proposed plan as a discretionary activity,—

(a) a resource consent is required for the activity; and

(b) the consent authority may grant the resource consent with or without conditions or decline the resource consent; and

(c) the activity must comply with the standards, terms, or conditions, if any, specified in the plan or proposed plan.

(5) If an activity is described in this Act, regulations, or a plan or proposed plan as a non-complying activity,—

(a) a resource consent is required for the activity; and

(b) the consent authority may grant the resource consent with or without conditions or decline the resource consent.

(6) Particular restrictions for non-complying activities are in section 104D.

(7) If an activity is described in this Act, regulations, or a plan as a prohibited activity, no application may be made for that activity and a resource consent must not be granted for it.

Sections 77A to 77D were inserted, as from 1 August 2003, by section 34 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(a) was substituted, as from 10 August 2005, by section 48 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2)(aa) was inserted, as from 10 August 2005, by section 48 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

77C 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 an 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 an activity, but does not classify the activity as controlled, restricted discretionary, discretionary, or non-complying under section 77B; or

(c) a rule in a proposed plan describes the activity as a prohibited activity and that 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, other than those prospecting, exploring, or mining activities set out in section 61(1A) of the Crown Minerals Act 1991, must be treated as a prohibited activity.

(3) An activity prohibited by section 105(2)(b) of the Historic Places Act 1993 must be treated as a prohibited activity.

Sections 77A to 77D were inserted, as from 1 August 2003, by section 34 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

77D Rules for certain activities may include restrictions on notification

A rule for a controlled activity or a restricted discretionary activity may state whether applications for a resource consent for the activity may be decided without notification under section 93 or without service under section 94(1).

Sections 77A to 77D were inserted, as from 1 August 2003, by section 34 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Miscellaneous provisions

78 Withdrawal of proposed policy statements and plans *[Repealed]*

Section 78 was repealed, as from 7 July 1993, by section 42 Resource Management Amendment Act 1993 (1993 No 65).

78A Combined regional and district documents

(1) A local authority may prepare a document that meets the requirements of 2 or more of the following:
- (a) a regional policy statement:
- (b) a regional plan:
- (c) a district plan.

(2) Subsection (1) is subject to sections 60, 64, 65, and 73.

Section 78A was inserted, as from 1 August 2003, by section 35 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

79 Review of policy statements and plans

(1) Every regional council shall commence a full review of its regional policy statement, and each of its regional plans, not later than 10 years after the statement or plan became operative.

(2) Every territorial authority shall commence a full review of its district plan not later than 10 years after the plan became operative.

(3) If, after reviewing a policy statement or plan under this section, a regional council or territorial authority considers—
- (a) That the statement or plan requires change or replacement, it shall change or replace the statement or plan in the manner set out in Schedule 1 and this Part:

(b) That the statement or plan can remain without change or replacement, it shall publicly notify that statement or plan as if it were a proposed policy statement or plan in the manner set out in Schedule 1 and this Part.

(4) When a regional council or territorial authority is reviewing a policy statement or plan, it shall review all sections of, and all changes to, the policy statement or plan regardless of when those sections or changes became operative.

(5) A policy statement or plan shall not cease to be operative by virtue of being due for review or while it is being reviewed.

(6) The obligations of each regional council and territorial authority under this section are in addition to its duty to monitor under section 35.

79A Circumstance when further review required

(1) Section 79B applies if, after a foreshore and seabed reserve has been set apart and established under section 43 of the Foreshore and Seabed Act 2004, a management plan for the foreshore and seabed reserve is—

(a) prepared and approved by the board of the foreshore and seabed reserve in accordance with section 44 of the Foreshore and Seabed Act 2004; and

(b) lodged with the regional council.

(2) The regional council that has responsibility for the area where the reserve is located must review its regional policy statement and each regional plan to the extent necessary to ensure that they recognise and provide for the management plan. It must start the review within 6 months of the management plan being lodged under subsection (1)(b).

(3) Section 79(4), (5), and (6) applies to a review required by this section.

Sections 79A and 79B were inserted, as from 17 January 2005, by section 19 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subsection (2) was substituted, as from 10 August 2005, by section 49 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

79B Consequence of review under section 79A

If a regional council, after reviewing a policy statement or plan under section 79A, considers that the policy statement or plan—

(a) requires change in order to recognise and provide for all or part of a management plan for a foreshore and seabed reserve, it must change the policy statement or plan in the manner set out in Schedule 1 and this Part:

(b) can remain without change, it must give public notice of that decision.

Sections 79A and 79B were inserted, as from 17 January 2005, by section 19 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

80 Local authorities may combine to prepare, etc, plans

(1) Two or more territorial authorities may agree to jointly prepare, implement, and administer a combined district plan for the whole or any part of their combined districts.

(2) Two or more regional councils may agree to jointly prepare, implement, and administer a combined regional plan for the whole or any part of their combined regions.

(3) One or more regional councils or territorial authorities may agree to jointly prepare, implement, and administer a combined regional and district plan for the whole or any part of their respective regions or districts.

(4) A local authority that is both a regional council and a territorial authority may prepare, implement, and administer a combined regional and district plan for the whole or any part of its region or district.

(5) The relevant local authorities shall consider the preparation of a combined regional or district plan 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.

(6) Such a combined plan may be prepared after consideration under subsection (5) or in any other case where the local authorities concerned consider it appropriate to do so.

(7) The provisions of clause 30 of Schedule 7 of the Local Government Act 2002 that relate to joint committees apply

to the appointment and conduct of any joint committee set up for the purposes of this section.

(8) Where a combined plan is prepared under this section—

(a) It shall be prepared in accordance with Schedule 1; and

(b) When approved by a local authority (whether or not approved by any of the other local authorities), it shall be deemed to be a plan separately prepared and approved by that authority for its region or district for the purposes of this Act.

Subsection (7) was substituted, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

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 (as defined in section 9) 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.

Subsection (1)(b) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by omitting the words "(changes to plans which will allow activities)". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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, after considering the matter referred to it under subsection (2), the Court considers that there is an inconsistency as described in subsection (1)(a) or (b), or the statement or plan does not give effect to a national policy statement or New Zealand coastal policy statement as referred to in subsection (1)(c),—

(a) the Court must order the authority responsible for the policy statement or plan to initiate a change to the policy statement or plan; or

(b) if the Court considers that it is of minor significance that does not affect the general intent and purpose of the policy statement, plan, or order concerned, the Court may allow it to remain.

The words "Environment Court" in the original subsections (1) to (5) (and "Court" in subsection (5)) were substituted, as from 2 September 1996, for the words "Planning Tribunal" and "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Section 82 was substituted, as from 1 August 2003, by section 36 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

82A Dispute relating to review under section 79A

(1) This section applies if there is a dispute between a local authority and the board of a foreshore and seabed reserve as to whether a policy statement or plan reviewed under section

79A(2) should be changed in order to recognise and provide for the management plan for the reserve.

(2) The board may refer a dispute to the Environment Court for a decision resolving the matter.

(3) If, after considering the matter referred to it under subsection (2), the Environment Court considers that there should be a change to the policy statement or plan to recognise and provide for the relevant management plan for the foreshore and seabed reserve,—

(a) the Environment Court must order the regional council responsible for the policy statement or plan to initiate a change to that policy statement or plan in the manner set out in Schedule 1; or

(b) if the Environment Court considers that the dispute relates to a matter of minor significance that does not affect the general intent and purpose of the policy statement or plan, the Environment Court may allow that policy statement or plan to remain unchanged.

Section 82A was inserted, as from 17 January 2005, by section 20 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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 provision 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 the First Schedule 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(1)) 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.

Subsection (2)(a) was amended, as from 7 July 1993, by section 43(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "Part 1" for the expression "clause 6", and subsection (2)(b) was amended by the same provision by substituting the expression "clause 21" for the expression "sections 64(4), 65(4), or 73(2) and under clause 23".

Subsection (3) was amended, as from 7 July 1993, by section 43(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "clause 21" for the expression "section 64(4) or section 65(4) or section 73(2) or under clause 23".

The words "Environment Court" and "Court" in subsection (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" and "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (7) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (7) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "an appeal" for the words "a reference". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Plan must not allow activity that prevents recognised customary activities

This heading was inserted, as from 17 January 2005, by section 21 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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 a significant adverse effect on a recognised customary activity carried out under section 17A(2).

Sections 85A and 85B were inserted, as from 17 January 2005, by section 21 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

85B Process to apply if plan or proposed plan does not comply with section 85A

(1) If the holder of a customary rights order 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 or clause 8 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 recognised customary activity; and

(b) the area that the proposed activity would have in common with the recognised customary activity; 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 recognised customary activity must be carried out to the exclusion of other activities; and

(e) whether the recognised customary activity can be exercised only in a particular area.

Sections 85A and 85B were inserted, as from 17 January 2005, by section 21 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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.

Part 6
Resource consents

87AA This Part subject to Part 6A

This Part applies subject to Part 6A.

Section 87AA was inserted, as from 26 March 2002, by section 7 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**).

Paragraph (c) was amended, as from 20 August 1998, by section 11 Resource Management Amendment Act 1994 (1994 No 105) by substituting

the expression "15, and 15A" for the expression "and 15". *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Paragraph (c) was amended, as from 20 August 1998, by section 17 Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "15A, and 15B" for the expression "and 15A". *See* clause 2 Resource Management Amendment Act 1997 Commencement Order 1998 (SR 1998/210).

Application for resource consent

88 Making an application

(1) A person may apply to the relevant local 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 local 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 relevant local 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.

Subsection (4) was amended, as from 7 July 1993, by section 44(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "Subject to subsection (5), an" for the word "An" and by omitting the words "(other than for a controlled activity)".

Subsection (5) was substituted, as from 7 July 1993, by section 44(2) Resource Management Amendment Act 1993 (1993 No 65).

Section 88 was substituted, as from 1 August 2003, by section 37 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5) was amended, as from 10 August 2005, by section 50 Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "to"

for the word "and" after the expression "357". *See* sections 131 to 135 of that Act as to the transitional provisions.

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; and

(b) the type of activity (being controlled, restricted, discretionary, or non-complying) for which the application was made under section 88, or for which the activity is treated under section 77C, 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(3) of the First Schedule; 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) This section applies subject to section 150D.

Section 88A was inserted, as from 17 December 1997, by section 18 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (1) was substituted, as from 1 August 2003, by section 38(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1A) was inserted, as from 1 August 2003, by section 38(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2) was amended, as from 1 August 2003, by section 38(2) Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "104(1)(b)" for the expression "104". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was inserted, as from 26 March 2002, by section 8 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

88B Processing provisions from which periods described in section 88C are excluded

The periods described in section 88C(2), (4), (6), (8), (10), and (12) must be excluded from the calculation of time limits in—

(a) section 95, which deals with the time limit for notification; and

(b) section 101(2A), which deals with the time limit for the commencement of a hearing if the application was not notified or if notice was not served; and

(c) section 115(b), which deals with the time limit for notification of the decision on an application for a resource consent if a hearing is not held; and

(d) section 173, which deals with the time limit for notification of the decision on a designation.

Section 88B was inserted, as from 1 August 2003, by section 39 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Section 88B was substituted, as from 10 August 2005, by section 51 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

88C Description of excluded periods

(1) Subsection (2) applies when—

(a) a consent authority has requested an applicant, under section 92(1), to provide further information; and

(b) the applicant provides further information under section 92A(1)(a) or section 92A(1)(b) and (2).

(2) The period that must be excluded from the provisions listed in section 88B is the period—

(a) starting with the date of the request under section 92(1); and

(b) ending with the date on which the applicant provides the information.

(3) Subsection (4) applies when—

(a) a consent authority has requested an applicant, under section 92(1), to provide further information; and

(b) 1 of the following applies:

(i) the applicant does not respond within the time limit specified in section 92A(1); or

(ii) the applicant responds under section 92A(1)(b) but does not comply with the time limit set under section 92A(2); or

(iii) the applicant responds under section 92A(1)(c).

(4) The period that must be excluded from the provisions listed in section 88B is the period—

(a) starting with the date of the request under section 92(1); and

(b) ending with—

(i) the date on which the 15 working days end, for an applicant who does not respond within the time limit specified in section 92A(1):

(ii) the date on which the time limit set under section 92A(2) ends, for an applicant who responds under section 92A(1)(b):

(iii) the date on which the applicant responds under section 92A(1)(c), for an applicant who responds under section 92A(1)(c).

(5) Subsection (6) applies when—

(a) a consent 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.

(6) The period that must be excluded from the provisions listed in section 88B 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.

(7) Subsection (8) applies when—

(a) a consent 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.

(8) The period that must be excluded from the provisions listed in section 88B 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 15 working days end; 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.

(9) Subsection (10) applies when an applicant tries, for the purposes of section 94, to obtain the approval of persons who may be adversely affected.

(10) The period that must be excluded from the provisions listed in section 88B is the time taken by the applicant in trying to obtain the approvals, whether or not they are obtained.

(11) Subsection (12) applies when a consent authority refers persons to mediation under section 99A.

(12) The period that must be excluded from the provisions listed in section 88B 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 1 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 88C was inserted, as from 10 August 2005, by section 51 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

89 Applications to territorial authorities for resource consents where land is in the 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).

Subsection (1) was amended, as from 7 July 1993, by section 45 Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "**,** or all," and by substituting the word "shall" for the words "may hear and".

90 Distribution of application to other authorities

[Repealed]

Subsection (1) was amended, as from 7 July 1993, by section 46(1) Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "(other than a regional council)", and by inserting the words "or territorial authority" and the words "or district".

Subsection (2) was substituted, as from 7 July 1993, by section 46(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was inserted, as from 20 August 1998, by section 12 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Section 90 was repealed, as from 1 August 2003, by section 40 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 one 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.

The words "Environment Court" in subsection (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

(4) This section does not apply to reports prepared under section 42A.

(5) Sections 357A(1) and 357C to 358 apply to subsections (1) and (2).

Subsection (2)(b) was amended, as from 20 August 1998, by section 19(2) Resource Management Amendment Act 1997 (1997 No 104) by inserting, after the words "of contaminants)", the expression "or 15B". *See* clause 2 Resource Management Amendment Act 1997 Commencement Order 1998 (SR 1998/210).

Subsection (3) was amended, as from 7 July 1993, by section 47(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the expression "subsection (1) or".

Subsection (3)(a) was substituted, as from 7 July 1993, by section 47(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (5) was inserted, as from 17 December 1997, by section 19 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Sections 92 to 94 were substituted, as from 1 August 2003, by section 41 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

The heading to section 92 was substituted, as from 10 August 2005, by section 52(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1) was amended, as from 10 August 2005, by section 52(2) Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "request" for the word "require". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsections (2) and (3) were substituted, as from 10 August 2005, by section 52(3) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (3A) was inserted, as from 10 August 2005, by section 52(3) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (5) was amended, as from 10 August 2005, by section 52(4) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "357A(1) and 357C to" for the expression "357 and". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 1 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 may decline the application if—

(a) 1 of the following applies:

(i) the applicant does not respond within the time limit specified in subsection (1); or

(ii) the applicant responds under subsection (1)(b) but does not comply with the time limit set under subsection (2); or

(iii) the applicant responds under subsection (1)(c); and

(b) the authority considers that it has insufficient information to enable it to determine the application.

(4) If the applicant appeals to the Environment Court against the decision to decline the application, the Court must decide whether the authority had sufficient information to enable it to determine the application.

(5) If the Court decides that the authority did not have sufficient information to enable it to determine the application, it must decline the appeal.

(6) If the Court decides that the authority had sufficient information to enable it to determine the application, it must hear and decide the appeal.

Sections 92A and 92B were inserted, as from 10 August 2005, by section 53 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 noti-

fication, tell the consent authority in a written notice whether the applicant agrees to the commissioning of the report.

(2) The consent authority may decline the application if—

(a) l of the following applies:

(i) the applicant does not respond within the time limit specified in subsection (1); or

(ii) the consent authority receives a written notice refusing the applicant's agreement to the commissioning of the report; and

(b) the authority considers that it has insufficient information to enable it to determine the application.

(3) If the applicant appeals to the Environment Court against the decision to decline the application, the Court must decide whether the authority had sufficient information to enable it to determine the application.

(4) If the Court decides that the authority did not have sufficient information to enable it to determine the application, it must decline the appeal.

(5) If the Court decides that the authority had sufficient information to enable it to determine the application, it must hear and decide the appeal.

Sections 92A and 92B were inserted, as from 10 August 2005, by section 53 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Notification of applications

This heading was repealed, as from 1 August 2003, by section 41 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

93 When public notification of consent applications is required

(1) A consent authority must notify an application for a resource consent unless—

(a) the application is for a controlled activity; or

(b) the consent authority is satisfied that the adverse effects of the activity on the environment will be minor.

(2) If subsection (1) applies, the consent authority must notify the application by—

(a) publicly notifying it in the prescribed form; and

(b) serving notice of it on every person prescribed in regulations.

Subsection (1)(c) was substituted, as from 1 July 1993, by section 118(2) Historic Places Act 1993 (1993 No 38).

Subsection (1)(d) was amended, as from 7 July 1993, by section 48 Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "; or the Fisheries Act 1983,".

Subsection (1A) was inserted, as from 1 October 1998, by section 223 Ngai Tahu Claims Settlement Act 1998 (1998 No 97). *See* clause 2 Ngai Tahu Claims Settlement Act Commencement Order 1998 (SR 1998/295).

Sections 92 to 94 were substituted, as from 1 August 2003, by section 41 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

94 When public notification of consent applications is not required

(1) If notification is not required under section 93(1), the consent authority must serve notice of the application on all persons who, in the opinion of the consent authority, may be adversely affected by the activity, even if some of those persons have given their written approval to the activity.

(2) However, a consent authority is not required to serve notice of the application under subsection (1) if all persons who, in the opinion of the consent authority, may be adversely affected by the activity have given their written approval to the activity.

Subsection (1)(b) was amended, as from 7 July 1993, by section 49(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the word "resource" for the words "coastal permit or land use".

Subsection (1A) was inserted and subsection (5) substituted, as from 7 July 1993, by section 49 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was amended, as from 20 August 1998, by section 13 Resource Management Amendment Act 1994 (1994 No 105) by substituting the expression "15(1), and 15A" for the expression "or 15(1)". *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (3) was amended, as from 20 August 1998, by section 20 Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "15A, and 15B" for the expression "and 15A". *See* clause 2 Resource Management Amendment Act 1997 Commencement Order 1998 (SR 1998/210).

Subsection (6) was inserted, as from 1 October 1998, by section 224 Ngai Tahu Claims Settlement Act 1998 (1998 No 97). *See* clause 2 Ngai Tahu Claims Settlement Act Commencement Order 1998 (SR 1998/295).

Sections 92 to 94 were substituted, as from 1 August 2003, by section 41 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

94A Forming opinion as to whether adverse effects are minor or more than minor

When forming an opinion, for the purpose of section 93, as to whether the adverse effects of an activity on the environment will be minor or more than minor, a consent authority—

(a) may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect; and

(b) for a restricted discretionary activity, must disregard an adverse effect of the activity on the environment that does not relate to a matter specified in the plan or proposed plan as a matter for which discretion is restricted for the activity; and

(c) must disregard any effect on a person who has given written approval to the application.

Sections 94A to 94D were inserted, as from 1 August 2003, by section 41 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraph (b) was amended, as from 10 August 2005, by section 54(1) Resource Management Amendment Act 2005 (2005 No 87) by adding the expression "; and". *See* sections 131 to 135 of that Act as to the transitional provisions.

Paragraph (c) was inserted, as from 10 August 2005, by section 54(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

94B Forming opinion as to who may be adversely affected

(1) Subsections (2) to (4) apply when a consent authority is forming an opinion, for the purpose of section 94(1), as to who may be adversely affected by the activity.

(2) The consent authority must have regard to every relevant statutory acknowledgement, within the meaning of an Act specified in Schedule 11, made in accordance with the provisions of that Act.

(3) A person—

(a) may be treated as not being adversely affected if, in relation to the adverse effects of the activity on the person, the plan permits an activity with that effect; or

(b) in relation to a controlled or restricted discretionary activity, must not be treated as being adversely affected if the adverse effects of the activity on the environment do not relate to a matter specified in the plan or proposed plan as a matter for which—

(i) control is reserved for the activity; or

(ii) discretion is restricted for the activity; or

(c) must not be treated as being adversely affected if it is unreasonable in the circumstances to seek the written approval of that person.

(4) However, the holder of a customary rights order must be treated as being adversely affected if, in the opinion of the consent authority, the grant of a resource consent may adversely affect a recognised customary activity carried out in accordance with section 17A(2).

Sections 94A to 94D were inserted, as from 1 August 2003, by section 41 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1) was amended, as from 17 January 2005, by section 22(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by substituting the words "Subsections (2) to (4)" for the words "Subsections (2) and (3)". *See* sections 40 to 43 of that Act.

Subsection (4) was inserted, as from 17 January 2005, by section 22(2) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

94C Public notification if applicant requests or if special circumstances exist

(1) If an applicant requests, a consent authority must notify an application for a resource consent by—

(a) publicly notifying it in the prescribed form; and

(b) serving notice of it on every person prescribed in regulations.

(2) If a consent authority considers that special circumstances exist, a consent authority may notify an application for a resource consent by—

(a) publicly notifying it in the prescribed form; and

(b) serving notice of it on every person prescribed in regulations.

Sections 94A to 94D were inserted, as from 1 August 2003, by section 41 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

94D When public notification and service requirements may be varied

(1) Despite section 93(1)(a), a consent authority must notify an application for a resource consent for a controlled activity in accordance with section 93(2) if a rule in a plan or proposed plan expressly provides that such an application must be notified.

(2) Despite section 93(1)(b), a consent authority is not required to notify an application for a resource consent for a restricted discretionary activity if a rule in a plan or proposed plan expressly provides that such an application does not need to be notified.

(3) Despite section 94(1), 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 that notice of such applications does not need to be served.

(4) A rule included in a plan under subsection (3) does not waive the need to serve an application if, in the opinion of the consent authority, the grant of a resource consent may adversely affect a recognised customary activity carried out in accordance with section 17A(2).

Sections 94A to 94D were inserted, as from 1 August 2003, by section 41 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4) was inserted, as from 17 January 2005, by section 23 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

95 Time limit for notification

If an application for a resource consent is required to be publicly notified or notice of the application is required to be served on any person, that notice must be given or served

within 10 working days of the date the application is first lodged.

Section 95 was substituted, as from 1 August 2003, by section 41 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Submissions on applications

96 Making of submissions

(1) The following persons may make submissions to a consent authority about an application for a resource consent:

(a) if the application is publicly notified in accordance with section 93 or section 94C, any person:

(b) if notice of the application is served under section 94(1), any person served with the notice of the application.

(2) A submission must be in the prescribed form and served on the local authority.

(3) A submission may state whether it is in support of, or in opposition to, the application or is neutral.

(4) A person who makes a submission shall serve a copy of it on the applicant as soon as reasonably practicable after serving the submission on the consent authority.

Subsections (1) and (2) were substituted, as from 1 August 2003, by section 42 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was amended, as from 10 August 2005, by section 55 Resource Management Amendment Act 2005 (2005 No 87) by adding the words "or is neutral". *See* sections 131 to 135 of that Act as to the transitional provisions.

97 Time limit for submissions

The closing date for serving submissions on a consent authority shall be the 20th working day after public notification under section 93 or service of notice under section 94(1).

Section 97 was amended, as from 7 July 1993, by section 50 Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "or such later date as is notified under section 37".

Section 97 was amended, as from 10 August 2005, by section 56 Resource Management Amendment Act 2005 (2005 No 87) by adding the words "under section 93 or service of notice under section 94(1)". *See* sections 131 to 135 of that Act as to the transitional provisions.

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

This heading was amended, as from 10 August 2005, by section 57(1) Resource Management Amendment Act 2005 (2005 No 87) by adding the words "*and mediation*". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 was substituted, as from 10 August 2005, by section 57(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 1 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 was inserted, as from 10 August 2005, by section 58 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by omitting the words "(whether or not it is required to be notified in accordance with section 93)". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 any hearing shall not be more than 25 working days from the closing date for submissions on the application.

(2A) If the application was not notified or if notice was not served, the date for the commencement of any hearing must be not later than 25 working days after the date the application was first lodged with the consent authority.

(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.

Subsection (2) was amended, as from 7 July 1993, by section 51(1) Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "(or such later date as is notified under section 37)".

Subsection (2A) was inserted, as from 7 July 1993, by section 51(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2A) was substituted, as from 1 August 2003, by section 43 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4) was amended, as from 7 July 1993, by section 51(3) Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "and that a joint decision will be made".

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.

Subsections (4A) and (6) were inserted, as from 7 July 1993, by section 52 Resource Management Amendment Act 1993 (1993 No 65).

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.

Subsection (2) was inserted by section 53 Resource Management Amendment Act 1993 (1993 No 65).

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 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

(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 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.

(3) A consent authority must not—

(a) have regard to trade competition when considering an application:

(b) when considering an application, have regard to any effect on a person who has given written approval to the application:

(c) grant a resource consent contrary to—

(i) section 107 or section 107A or section 217:

(ii) an Order in Council in force under section 152:

(iii) any regulations:

(iv) a *Gazette* notice referred to in section 26(1), (2), and (5) of the Foreshore and Seabed Act 2004:

(d) grant a resource consent if the application should have been publicly notified and was not.

(4) Subsection (3)(b) does not apply if a person has given written approval in accordance with that paragraph but, before the date of the hearing (if a hearing is held) or otherwise before the determination of the application, that person gives notice in writing to the consent authority that the approval is withdrawn.

(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.

Section 104 was substituted, as from 7 July 1993, by section 54 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was amended, as from 20 August 1998, by section 21(1) Resource Management Amendment Act 1997 (1997 No 104) by inserting the expression "or 15B". *See* clause 2 Resource Management Amendment Act 1997 Commencement Order 1998 (SR 1998/210).

Subsection (3)(c) was substituted, as from 17 January 2005, by section 24 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subsection (5) was amended, as from 17 December 1997, by section 21(2) Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "108(2)(g)" for the expression "108(1)(g)". *See* section 78 of that Act as to the transitional provisions.

Subsection (8) was substituted, as from 17 December 1997, by section 21(3) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Section 104 was substituted, as from 1 August 2003, by section 44 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2A) was inserted, as from 10 August 2005, by section 59 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 for matters over which it has reserved control in its plan or proposed plan.

Sections 104A to 104D were inserted, as from 1 August 2003, by section 44 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraph (a) was substituted, as from 10 August 2005, by section 60 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 104A to 104D were inserted, as from 1 August 2003, by section 44 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

104C Particular restrictions for restricted discretionary activities

When considering an application for a resource consent for a restricted discretionary activity, a consent authority—

(a) must consider only those matters specified in the plan or proposed plan to which it has restricted the exercise of its discretion; and

(b) may grant or refuse the application; and

(c) if it grants the application, may impose conditions under section 108 only for those matters specified in the plan or proposed plan over which it has restricted the exercise of its discretion.

Sections 104A to 104D were inserted, as from 1 August 2003, by section 44 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

104D Particular restrictions for non-complying activities

(1) Despite any decision made for the purpose of section 93 in relation to minor 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)(b) 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.

Sections 104A to 104D were inserted, as from 1 August 2003, by section 44 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Decisions on applications relating to discharge of greenhouse gases

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 contravene 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.

Sections 104E and 104F were inserted, as from 2 March 2004, by section 7 Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2). *See* sections 8 and 9 of that Act for transitional provisions relating to applications and rules made before 2 March 2004.

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.

Sections 104E and 104F were inserted, as from 2 March 2004, by section 7 Resource Management (Energy and Climate Change) Amendment Act 2004 (2004 No 2). *See* sections 8 and 9 of that Act for transitional provisions relating to applications and rules made before 2 March 2004.

The heading to section 104F was amended, as from 10 August 2005, by section 61(1) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "**national environmental standards**" for the words "**regulations made under section 43**". *See* sections 131 to 135 of that Act as to the transitional provisions.

Section 104F was amended, as from 10 August 2005, by section 61(2)(a) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "a national environmental standard is made" for the words "regulations

are made under section 43". *See* sections 131 to 135 of that Act as to the transitional provisions.

Paragraphs (a) and (b) were amended, as from 10 August 2005, by section 61(2)(b) Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "standard" for the word "regulations". *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Subsection (1) was substituted, as from 7 July 1993, by section 55(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(b) was amended, as from 17 December 1997, by section 22(1) Resource Management Amendment Act 1997 (1997 No 104) by inserting the words "consent may only be refused or". *See* section 78 of that Act as to the transitional provisions.

Subsection (2)(a) was substituted, as from 7 July 1993, by section 55(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2)(b) was substituted, as from 7 July 1993, by section 55(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2)(b) was repealed, as from 17 December 1997, by section 22(2) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (2A) was inserted, as from 17 December 1997, by section 22(3) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (3A) was inserted, as from 17 December 1997, by section 22(4) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Sections 105 and 106 were substituted, as from 1 August 2003, by section 44 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

106 Consent authority may refuse subdivision consent in certain circumstances

(1) Despite section 77B, 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.

Subsection (1) was amended, as from 7 July 1993, by section 56 Resource Management Amendment Act 1993 (1993 No 65) by inserting in paras (a) and (b) the words "falling debris,".

Sections 105 and 106 were substituted, as from 1 August 2003, by section 44 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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.

Subsection (1) was amended, as from 7 July 1993, by section 57(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or a coastal permit to do something that would otherwise contravene section 15".

Subsection (1) was amended, as from 20 August 1998, by section 14(2) Resource Management Amendment Act 1994 (1994 No 105) by inserting the words "or section 15A". See clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (1)(b) was substituted, and subsection (1)(ba) was inserted, as from 20 August 1998, by section 14(1) Resource Management Amendment Act 1994

(1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (2) was amended, as from 7 July 1993, by section 57(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or a coastal permit to do something that would otherwise contravene section 15".

Subsection (2)(b) was substituted, and subsection (2)(c) was inserted, as from 7 July 1993, by section 57(3) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2) was substituted, as from 17 December 1997, by section 23(1) Resource Management Amendment Act 1997 (1997 No 104). See section 78 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 20 August 1998, by section 14(2) Resource Management Amendment Act 1994 (1994 No 105) by inserting the words "or section 15A". See clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (3) was substituted, as from 7 July 1993, by section 57(4) Resource Management Amendment Act 1993 (1993 No 65).

107A Restrictions on grant of resource consents

(1) A consent authority must not grant an application for a resource consent to do something that will, or is likely to, have a significant adverse effect on a recognised customary activity carried out in accordance with section 17A(2), unless written approval is given for the proposed activity by the holder of the relevant customary rights order.

(2) In determining whether a proposed activity will, or is likely to, have a significant adverse effect on a recognised customary activity, a consent authority must consider the following matters:

- (a) the effects of the proposed activity on the recognised customary activity; and
- (b) the area that the proposed activity would have in common with the recognised customary activity; 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 recognised customary activity must be carried out to the exclusion of other activities; and
- (e) whether the recognised customary activity can be exercised only in a particular area; and
- (f) whether an alternative location or method would avoid, remedy, or mitigate any significant adverse effects of

the proposed activity on the recognised customary activity; and

(g) whether any conditions could be included in a resource consent for the proposed activity that would avoid, remedy, or mitigate any significant adverse effects of the proposed activity on the recognised customary activity.

(3) Despite sections 77B(2)(a) and 104A, subsection (1) may prevent the grant of an application for a resource consent for a controlled activity.

Sections 107A to 107D were inserted, as from 17 January 2005, by section 25 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

107B Provision for certain infrastructure works and related operations

(1) Section 107A does not prevent the grant of a resource consent to carry out—

(a) an infrastructure work and its associated operations if—

(i) the infrastructure work and its associated operations were lawfully established before the commencement of Part 3 of the Foreshore and Seabed Act 2004; and

(ii) any significant adverse effects of the proposed activity on the recognised customary activity will be, or are likely to be, the same or similar in character, intensity, and scale to those that existed before the application for the resource consent was made:

(b) maintenance work on, to, or in respect of an infrastructure work and its associated operations that were lawfully established before the commencement of Part 3 of Foreshore and Seabed Act 2004, so long as any significant adverse effects of the maintenance work on the recognised customary activity are temporary in nature.

(2) In this section, **infrastructure work and its associated operations** is limited to any infrastructure works and associated operations that are owned, operated, or carried out by 1 or more of the following:

(a) the Crown, as defined in section 2(1) of the Public Finance Act 1989:
(b) a local authority:
(c) a network utility operator:
(d) an electricity generator as defined in section 2(1) of the Electricity Act 1992:
(e) a port company as defined in section 2(1) of the Port Companies Act 1988 or a port operator as defined in section 650J(6) of the Local Government Act 1974:
(f) the Maritime Safety Authority of New Zealand.

Sections 107A to 107D were inserted, as from 17 January 2005, by section 25 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

107C Circumstances when written approval for resource consent required from holder of customary rights order

(1) This section applies if—
(a) the holder of a customary rights order gives written approval under section 107A(1) for a resource consent for a proposed activity; and
(b) the carrying out of the proposed activity under the resource consent would have the effect of suspending or cancelling, in whole or in part, the relevant customary rights order.

(2) The holder of the customary rights order must acknowledge in writing that the effect described in subsection (1)(b) will occur.

(3) Both the written approval given under section 107A(1) and the written acknowledgement given under subsection (2)—
(a) form part of the application for a resource consent for the proposed activity; and
(b) if a resource consent is granted, form part of the resource consent for that activity.

Sections 107A to 107D were inserted, as from 17 January 2005, by section 25 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

107D Process to apply if grant of resource consent has effect of cancelling customary rights order

(1) If the effect of carrying out the proposed activity under a resource consent granted in the circumstances contemplated by

section 107C would be permanently to cancel the customary rights order, in whole or in part,—

(a) the holder of the customary rights order must apply to cancel the order, in whole or in part, under section 60 or section 87 of the Foreshore and Seabed Act 2004; and

(b) a decision by the consent authority to grant a resource consent for the proposed activity is of no effect until the application referred to in paragraph (a) has been determined in accordance with the Foreshore and Seabed Act 2004 and all appeal rights have been pursued.

(2) However, if an application to cancel a customary rights order is declined, the relevant resource consent must be treated as if it were declined by the consent authority.

Sections 107A to 107D were inserted, as from 17 January 2005, by section 25 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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 one 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 replanting 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 77B(2)(c) or (3)(c)):

(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 coastal marine area (relating to land of the Crown in the coastal marine area or land in the coastal marine area vested in the regional council), 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 one 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)

(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 the Maori Land 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.

Subsection (1) was amended, as from 7 July 1993, by section 58 Resource Management Amendment Act 1993 (1993 No 65) by substituting the letter "A" for the words "Except as provided in subsection (3), a".

Subsection (1)(b) was amended, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150) by inserting the words "alteration or".

Subsection (1)(c) was amended, as from 7 July 1993, by section 58(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "in favour of the consent authority" for the words "which is capable of registration under the Land Transfer Act 1952".

Subsection (1)(f) was amended, as from 7 July 1993, by section 58(3) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "notwithstanding section 114(1),".

Subsection (1)(g) was inserted, as from 7 July 1993, by section 58(4) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was substituted, as from 17 December 1997, by section 24(1) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 7 July 1993, by section 58(5) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "(g)" for the expression "(f)" and by omitting the words "subsection (3) and".

Subsection (2) was substituted, as from 17 December 1997, by section 24(1) Resource Management Amendment Act 1997 (1997 No 104) *See* section 78 of that Act as to the transitional provisions.

Subsection (2)(b) was substituted, as from 1 August 2003, by section 45(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(f) was amended, as from 1 August 2003, by section 45(2) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "section 77B(2)(c) or (3)(c)" for the words "section 105(l)(a) or (b)". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was substituted, as from 7 July 1993, by section 58(6) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (4) was substituted, as from 7 July 1993, by section 58(6) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (5) was substituted, as from 7 July 1993, by section 58(6) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (6) was amended, as from 17 December 1997, by section 24(2) Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "(2)(b)" for the expression "(1)(b)" *See* section 78 of that Act as to the transitional provisions.

Subsection (6) was repealed, as from 1 August 2003, by section 45(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (7) was amended, as from 17 December 1997, by section 24(3) Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "(2)(d)" for the expression "(1)(c)". *See* section 78 of that Act as to the transitional provisions.

Subsection (8) was amended, as from 17 December 1997, by section 24(4)(b) Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "(2)(e)" for the expression "(1)(e)". *See* section 78 of that Act as to the transitional provisions.

Subsection (8) was amended, as from 20 August 1998, by section 24(4)(a) Resource Management Amendment Act 1997 (1997 No 104) by inserting the expression "or 15B". *See* clause 2 Resource Management Amendment Act 1997 Commencement Order 1998 (SR 1998/210).

Subsection (9)(a) was substituted, as from 7 July 1993, by section 58(7) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (9)(b) was substituted, as from 7 July 1993, by section 58(7) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (9)(b) was amended, as from 15 November 1995, by section 34 Waikato Raupatu Claims Settlement Act 1995 (1995 No 58) by inserting the words "and excluding land registered in the name of Pootatau Te Wherowhero under section 19 of the Waikato Raupatu Claims Settlement Act 1995". *See* clause 2 Waikato Raupatu Claims Settlement Act Commencement Order 1995 (SR 1995/247).

Subsection (9)(c) was substituted, as from 7 July 1993, by section 58(7) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (9) was substituted, as from 17 December 1997, by section 24(5) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions, and section 79 of that Act as to the financial transitional provisions.

Subsection (10) was inserted, as from 17 December 1997, by section 24(5) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions, and section 79 of that Act as to the financial transitional provisions.

Subsection (10)(a) was amended, as from 1 August 2003, by section 45(4) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "or proposed plan" after the word "plan". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (10)(b) was amended, as from 1 August 2003, by section 45(5) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "or proposed plan" after the word "plan". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 was inserted, as from 1 August 2003, by section 46 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 District Land Registrar 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.

Subsection (1) was amended, as from 17 December 1997, by section 25 Resource Management Amendment Act 1997 (1997 No 104) by substituting the expressions "108(2)(b)" and "108(2)(d)" for the expressions "108(1)(b)" and "108(1)(c)" respectively. *See* section 78 of that Act as to the transitional provisions.

Subsection (1) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "108A" for the expression "108(2)(b)". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "section 171 of the Local Government Act 2002" for the words "section 708A(a) of the Local Government Act 1974". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsection (4) was amended, as from 1 August 2003, by section 47 Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "(including completion of any interim monitoring required)" after the word "given". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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.

Subsection (1)(a) and (c) were amended, as from 7 July 1993, by section 59 Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "or section 220(1)(a)".

Subsection (1) was amended, as from 17 December 1997, by section 26 Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "108(2)(a)" for the expression "108(1)(a)". *See* section 78 of that Act as to the transitional provisions.

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 was amended, as from 7 July 1993, by section 60 Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "or section 220(1)(a)".

Section 111 was amended, as from 17 December 1997, by section 27 Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "108(2)(a)" for the expression "108(1)(a)". *See* section 78 of that Act as to the transitional provisions.

Section 111 was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by omitting the words "accordance with the requirements of section 223F of the Local Government Act 1974 and in". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

112 Obligation to pay rent and royalties deemed condition of consent

(1) In every coastal permit authorising the holder to—

(a)

(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(1)(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).

Subsection (1)(a) was repealed, as from 17 December 1997, by section 28 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (1)(b) was amended, as from 7 July 1993, by section 61(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the word "shell,".

Subsection (3) was inserted, as from 7 July 1993, by section 61(2) 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 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 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 of fact; 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.

Subsection (1)(aa) to (ae) was inserted, as from 10 August 2005, by section 62 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was inserted, as from 7 July 1993, by section 62 Resource Management Amendment Act 1993 (1993 No 65).

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 was substituted, as from 1 August 2003, by section 48 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

115 Time limits for notification of decision

Notice of a decision on an application for a resource consent must be given in accordance with section 114,—

(a) if a hearing is held, no later than 15 working days after the conclusion of the hearing; or

(b) if a hearing is not held,—

(i) for applications that are not notified at all or notice of the application is not served on any person, no later than 20 working days after the date the application was first lodged with the local authority; or

(ii) for applications that are notified under section 93 or section 94C or if notice of the application is served under section 94, no later than 20 working days after the closing date for submissions.

Subsection (1)(b) was substituted, as from 7 July 1993, by section 63(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2) was repealed, as from 7 July 1993, by section 63(2) Resource Management Amendment Act 1993 (1993 No 65).

Section 115 was substituted, as from 1 August 2003, by section 49 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

116 When a resource consent commences

(1) Except as provided in subsections (1A), (2), and (3), 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—

shall commence 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) A coastal permit granted by the Minister of Conservation under section 119 shall commence in accordance with section 119(7).

Subsection (1) was amended, as from 7 July 1993, by section 64(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "(1A), (2), and (3)" for the expression "(2) and (3)" and by inserting the words "states a later date".

The words "Environment Court" in subsection (1)(a) and (b) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1A) was inserted, as from 7 July 1993, by section 64(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1A) was amended, as from 1 August 2003, by section 50(1) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "applies, or an objection has been made under section 357, in which case subsection (1AB) applies" for the words "shall apply". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1A) was amended, as from 10 August 2005, by section 63 Resource Management Amendment Act 2005 (2005 No 87) by substituting the expression "357A" for the expression "357". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1AB) was inserted, as from 1 August 2003, by section 50(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1AB) was amended, as from 10 August 2005, by section 63 Resource Management Amendment Act 2005 (2005 No 87) by substituting the expression "357A" for the expression "357". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 7 July 1993, by section 64(3) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "119(7)" for the expression "119(4)".

Restricted coastal activities

117 Application to carry out a restricted coastal activity

(1) Where any person applies for a coastal permit to carry out any activity which a regional coastal plan describes as a restricted coastal activity, the application shall be made to the regional council which shall forward a copy of it without delay to the Minister of Conservation, and to the appropriate territorial authority.

(2) The regional council shall deal with the application for a restricted coastal activity as if it were any other application, and sections 37, 91, and 92 shall apply.

(3) An application for a restricted coastal activity shall be notified by the regional council in accordance with sections 93(2) and 95.

(4) Submissions shall be served on the regional council, and sections 96 to 99 shall apply.

(5) The application shall be considered by a committee of the regional council that is—

(a) Set up under clause 30 of Schedule 7 of the Local Government Act 2002 and that also contains one person appointed by the Minister of Conservation (either for all such cases or in a particular case); and

(b) Serviced by the regional council.

(6) A committee that considers an application for a coastal permit for a restricted coastal activity—

(a) May exercise any of the powers or rights of a consent authority under sections 37 and 39 to 42A; and

(b) Shall, having regard to the restrictions in section 119(6), make a recommendation on the application to the Minister of Conservation after exercising any of the powers, duties, rights, and discretions set out in sections 91, 92, and 99 to 108—

as if every reference in those sections to a consent authority was a reference to the committee, and every reference to a decision was a reference to a recommendation.

Section 117 was substituted, as from 7 July 1993, by section 65 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was amended, as from 10 August 2005, by section 64 Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "as required by section 90". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "in accordance with sections 93(2) and 95" for the words "in accordance with sections 93 and 95, and section 94 shall not apply". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5)(a) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "clause 30 of Schedule 7 of the Local Government Act 2002" for the words "Part 5A of the Local Government Act 1974". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

118 Recommendation of hearing committee

(1) Every recommendation of a committee under section 117 shall be in writing and state the reasons for the recommendation.

(2) A committee under section 117 shall ensure that a copy of its recommendation is served on the Minister of Conservation, the applicant, and every person who made a submission.

(3) A committee under section 117 shall ensure that notice of a recommendation made by it is served on—

(a) every prescribed person; and

(b) Such other persons or authorities as the committee considers are likely to be interested in the recommendation.

(4) A notice of a recommendation under subsection (3) shall state a summary of the recommendation and where the full text of the recommendation is available for public inspection.

(5) A notice of recommendation under section 117 shall be given—

(a) Where a hearing is held, not later than 15 working days after the conclusion of the hearing; or

(b) Where no hearing is held, not later than 15 working days after the closing date for submissions or after all submissions are withdrawn.

(6) Sections 120 and 121 (relating to appeals) apply with all necessary modifications in respect of notification of a recommendation under section 117 and any inquiry by the Environment Court on that recommendation, as if every reference to—

(a) A decision, were a reference to a recommendation; and

(b) An appeal, were a reference to an inquiry.

Subsection (3)(a) was substituted, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

The words "Environment Court" in subsection (6) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

119 Decision on application for restricted coastal activity

(1) Within 20 working days of receiving—

(a) A recommendation on an application for a coastal permit for a restricted coastal activity; or

(b) Where an inquiry by the Environment Court into that recommendation has been made, the report of the Environment Court,—

the Minister of Conservation shall make a decision on the application and give reasons for that decision.

(2) When considering his or her decision on the application, the Minister of Conservation shall—

(a) Take into account the recommendation of the hearing committee or report of the Environment Court, as the case may be; and

(b) Have regard to the matters set out in section 104—

and, subject to subsections (3) and (6), may grant or refuse to grant the coastal permit and, in granting the permit, may include any conditions in it in accordance with section 108.

(3) The Minister of Conservation shall not grant or refuse to grant a coastal permit for a restricted coastal activity, or include any conditions in a permit, if the reason for granting or refusing the permit or including the condition is based on a matter that was not considered by the hearing committee under section 117 or, where there was an appeal, by the Environment Court in its inquiry, without the written agreement of the parties to the hearing or appeal, as the case may require.

(4) Where the Minister of Conservation considers that subsection (3) may apply, the Minister of Conservation may, if the Minister of Conservation considers it is appropriate in the circumstances, refer the application back to the hearing committee or Environment Court (whichever dealt with it last), and seek a recommendation or report on the matter in relation to the application.

(5) Where an application is referred back under subsection (4), the provisions of sections 117 and 118 shall apply accordingly and the period of 20 working days specified in subsection (1) shall not begin until the Minister of Conservation has received the recommendation or report requested under subsection (4).

(6) The Minister of Conservation must not grant a coastal permit for a restricted coastal activity if the activity is contrary to—

(a) section 107 or section 107A or section 217:

(b) an Order in Council in force under section 152:

(c) any regulations:

(d) a *Gazette* notice referred to in section 26(1), (2), and (5) of the Foreshore and Seabed Act 2004.

(7) Where the Minister of Conservation decides to grant a coastal permit for a restricted coastal activity, the permit shall commence on the date of the decision or such later date as the Minister of Conservation states in his or her decision.

Section 119 was substituted, as from 7 July 1993, by section 66 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsections (1) to (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (6) was substituted, as from 17 January 2005, by section 26 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

119A Residual powers of regional council

Where the Minister of Conservation has granted a coastal permit for a restricted coastal activity, the regional council which would otherwise have decided the application for that permit—

(a) Shall have the powers under sections 127 to 132 (relating to the change of consent conditions) in regard to that coastal permit; but

  (i) Shall not exercise any of those powers without obtaining the prior written consent of the Minister of Conservation to do so; and

  (ii) Shall comply with any conditions imposed by the Minister in regard to the exercise of those powers; and

(b) Shall have all other functions, duties, and powers in respect of the coastal permit as if it had itself granted the permit.

Section 119A was inserted, as from 7 July 1993, by section 67 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsections (1) to (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Appeals

120 Right to appeal

(1) Any one 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, except a decision of the Minister of Conservation under section 119, 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.

(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 was amended, as from 7 July 1993, by section 68(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "", except a decision of the Minister of Conservation under section 119,".

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2) was inserted, as from 7 July 1993, by section 68(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2) was amended, as from 10 August 2005, by section 65 Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "sections 357A, 357C, and 357D" for the expression "section 357". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 10 August 2005, by section 65 Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "provide" for the word "provides". *See* sections 131 to 135 of that Act as to the transitional provisions.

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) Where a notice for an inquiry is lodged with the Environment Court in relation to a recommendation of a hearing committee on a restricted coastal activity under section 118, the appellant

shall ensure that a copy of that notice is served on the Minister of Conservation on the day the notice is lodged.

Subsection (3) was inserted, as from 7 July 1993, by section 69 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsection (1), (2) and (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

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 which is land of the Crown or land vested in a regional council 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.

Subsection (4) was substituted, as from 1 May 2002, by section 191(1) Personal Property Securities Act 1999 (1999 No 126). *See* Part 12 of that Act for transitional provisions.

Subsection (6)(b) was amended, as from 7 July 1993, by section 70 Resource Management Amendment Act 1993 (1993 No 65) by inserting the word "shell,".

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 was substituted, as from 10 August 2005, by section 66 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

124A When sections 124B and 124C apply and when they do not apply

124B Applications by existing holders of resource consents

124C Applications by persons who are not existing holders of resource consents

125 Lapsing of consent

(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.

Subsection (1) was substituted, as from 1 August 2003, by section 51 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1A) was inserted, as from 1 August 2003, by section 51 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1A) was amended, as from 10 August 2005, by section 68 Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "357A and 357C to" for the expression "357 and". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was inserted, as from 7 July 1993, by section 71 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was inserted, as from 19 March 2004, by section 4 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 was substituted, as from 1 August 2003, by section 52 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was amended, as from 10 August 2005, by section 69 Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "357A and 357C to" for the expression "357 and". *See* sections 131 to 135 of that Act as to the transitional provisions.

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)

(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 local 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.

Subsection (1) was substituted, as from 1 August 2003, by section 53(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1) was substituted, as from 10 August 2005, by section 70 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 7 July 1993, by section 72(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "Except in accordance with section 234, this" for the word "This".

Subsection (2) was repealed, as from 10 August 2005, by section 70 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (3)(b) was substituted, as from 17 December 1997, by section 29 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (3) was substituted, as from 1 August 2003, by section 53(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4)(b) was amended, as from 7 July 1993, by section 72(2) Resource Management Amendment Act 1993 (1993 No 65) by omitting the word "permitted,".

Subsection (4) was substituted, as from 1 August 2003, by section 53(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 water, coastal, 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 water, coastal, 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)

Subsection (1)(a) was amended, as from 7 July 1993, by section 73(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or times" and by substituting in subpara (ii) the words "holder of a discharge permit or a coastal permit to do something that would otherwise contravene section 15" for the words "discharge permit holder".

Subsection (1)(a)(ii) was amended, as from 20 August 1998, by section 30 Resource Management Amendment Act 1997 (1997 No 104) by inserting the expression "or 15B". *See* clause 2 Resource Management Amendment Act 1997 Commencement Order 1998 (SR 1998/210).

Subsection (1)(b) was substituted, as from 7 July 1993, by section 73(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(ba) was inserted, as from 1 August 2003, by section 54 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(ba) was amended, as from 10 August 2005, by section 71(1) Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "under section 43". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was inserted, as from 7 July 1993, by section 73(3) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2) was repealed, as from 10 August 2005, by section 71(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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); 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).

Subsection (1)(c) was amended, as from 1 August 2003, by section 55(1) Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "128(1)(a) or (ba)" for the expression "128(a)". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(d) was amended, as from 10 August 2005, by section 72(1) Resource Management Amendment Act 2005 (2005 No 87) by adding the expression "; and". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1)(e) was inserted, as from 10 August 2005, by section 72(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 7 July 1993, by section 74 Resource Management Amendment Act 1993 (1993 No 65) by inserting the expression ", (5), and (6)".

Subsection (2) was substituted, as from 1 August 2003, by section 55(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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) Where the Minister of Conservation reviews a consent granted in respect of a restricted coastal activity, the hearing shall be conducted by a hearing committee set up under section 117, and sections 96 to 102 and section 118 (which relate to hear-

ings, the decision of a hearing committee, and rights of inquiry) shall apply with all necessary modifications to its recommendation to the Minister as if—

(a) A hearing committee were a consent authority; and

(b) A recommendation were a decision; and

(c) A notice of review were an application for a resource consent; and

(d) The consent holder were the applicant for a resource consent.

(3) Sections 93 to 94C 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) Subsection (3) applies whether or not—

(a) Notification is required by a plan or proposed plan; or

(b) The review relates to a resource consent in respect of a controlled, restricted discretionary, discretionary, or non-complying activity.

(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 section 93(2) or section 94(1); 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 hearing committee shall only hear from 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 review 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.

Subsection (3) was substituted, as from 1 August 2003, by section 56(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4)(b) was amended, as from 7 July 1993, by section 75(1) Resource Management Amendment Act 1993 (1993 No 65) by omitting the word "permitted,".

Subsection (4)(b) was amended, as from 1 August 2003, by section 56(2) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "restricted discretionary," after the word "controlled,". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5) was inserted, as from 7 July 1993, by section 75(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (5) was substituted, as from 1 August 2003, by section 56(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsections (6), and (7) were inserted, as from 7 July 1993, by section 75(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (8) was inserted, as from 1 August 2003, by section 56(4) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

131 Matters to be considered in review

(1) When reviewing the conditions of a resource consent, the consent authority or hearing committee set up under section 117 in respect of a permit for a restricted coastal activity—

(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

(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.

Subsection (2) was amended, as from 20 August 1998, by section 31 Resource Management Amendment Act 1997 (1997 No 104) by inserting the expression "or 15B". *See* clause 2 Resource Management Amendment Act 1997 Commencement Order 1998 (SR 1998/210).

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, one 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 (other than a review initiated by the Minister of Conservation) 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) Sections 118 and 119 apply, with all necessary modifications, to a review of consent conditions initiated by the Minister of Conservation as if—

(a) A hearing committee were a consent authority; and

(b) A recommendation were a decision; and

(c) A notice of review were an application for a resource consent; and

(d) The consent holder were the applicant for a resource consent.

(4) Notwithstanding sections 128 to 131 and subsections (1) to (3), where—

(a) A consent authority reviews a resource consent under section 128(1)(c); and

(b) The application contained inaccuracies which 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—

the consent authority may cancel the resource consent.

Subsection (1) was amended, as from 7 July 1993, by section 76(1) Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "paragraphs (b) or (c) of" and by substituting the words "that section" for the words "those paragraphs".

Subsection (4) was inserted, as from 7 July 1993, by section 76(2) Resource Management Amendment Act 1993 (1993 No 65).

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.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 was inserted, as from 10 August 2005, by section 73 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Subsection (1) was substituted, as from 7 July 1993, by section 77 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 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).

Subsection (2A) was inserted, as from 10 August 2005, by section 74(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (5) was amended, as from 10 August 2005, by section 74(2) Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "and is not for a limited period," after the expression "subsection (2)(b)(ii),". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 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.

Subsection (1)(a) was amended, as from 7 July 1993, by section 78(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or to a local authority".

Subsection (2) was amended, as from 7 July 1993, by section 78(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or to a local authority".

Section 137 was substituted, as from 10 August 2005, by section 75 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 was inserted, as from 20 August 1998, by section 15 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (6) was amended, as from 1 July 2005, by section 11(3) Maritime Transport Amendment Act 2004 (2004 No 98) by substituting the words "Maritime New Zealand" for the words "Maritime Safety".

Certificates of compliance or existing use

This heading was substituted, as from 10 August 2005, by section 76 Resource Management Amendment Act 2005 (2005 No 87). It previously read "*Certificate of compliance*" *See* sections 131 to 135 of that Act as to the transitional provisions.

139 Consent authorities to grant certificates of compliance

(1) Where an activity could be lawfully carried out without a resource consent, in respect of any particular location, the consent authority shall, upon request and payment of the appropriate administrative charge, issue to any person who so requests a certificate that a particular proposal or activity complies with the plan in relation to that location.

(2) A consent authority may require an applicant for a certificate of compliance to provide further information relating to the request if, in the opinion of the consent authority, the information is necessary to determine whether the particular proposal or activity complies with the plan.

(3) Subject to subsection (5), no certificate of compliance may be issued where a proposed plan has been notified and the proposal or activity is not a permitted activity, or could not lawfully be carried out without a resource consent, in relation to that location in the proposed plan.

(4) A certificate of compliance shall describe the particular proposal or activity and the location concerned and be issued within 20 working days of the receipt by the consent authority of the request, or of further information requested under subsection (2), whichever is the later.

(5) A certificate of compliance shall state that the particular proposal or activity was permitted, or could be lawfully carried out without a resource consent, on the date of receipt of the request by the consent authority.

(6) Subject to sections 10, 10A, and 20A(2), a certificate of compliance shall be deemed to be an appropriate resource consent issued subject to any conditions specified in the plan, and the provisions of this Act shall apply accordingly, except that, with the exceptions of sections 120, 121, 122, 125, 134, 135, 136, and 137, this Part does not apply.

(7) Sections 357A and 357C to 358 apply in relation to an application for a certificate of compliance.

Section 139 was substituted, as from 7 July 1993, by section 79 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the word "an" for the words "a plan describes any activity as a permitted activity, or the". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was amended, as from 17 December 1997, by section 32 Resource Management Amendment Act 1997 (1997 No 104) by substituting the words "Subject to subsection (5), no" for the word "No". *See* section 78 of that Act as to the transitional provisions.

Subsection (6) was amended, as from 10 August 2005, by section 77(1) Resource Management Amendment Act 2005 (2005 No 87) by substituting the expression "20A(2)" for the expression "20(2)". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (7) was inserted, as from 10 August 2005, by section 77(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 was inserted, as from 10 August 2005, by section 78 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Decisions on proposals of national significance

This heading was substituted, as from 10 August 2005, by section 79 Resource Management Amendment Act 2005 (2005 No 87). The heading previously read "*Minister's call-in powers*" *See* sections 131 to 135 of that Act as to the transitional provisions.

140 Meaning of applicant, local authority, and matter in sections 141 to 150AA

In sections 141 to 150AA,—

(a) **applicant** means—
- (i) an applicant for a resource consent; or
- (ii) a person who has requested a local authority to make a change to a plan under Schedule 1; or
- (iii) a person who has requested a local authority to prepare a regional plan under Schedule 1; or
- (iv) a requiring authority; or
- (v) a heritage protection authority:

(b) **local authority** means—
- (i) a local authority, for an application for a resource consent; or
- (ii) a local authority, for a request for a change to be made to a plan; or
- (iii) a regional council, for a request for the preparation of a regional plan; or
- (iv) a territorial authority, for a notice of requirement:

(c) **matter** means—
- (i) an application for a resource consent; or

(ii) a request for a change to be made to a plan under Schedule 1; or

(iii) a request for the preparation of a regional plan under Schedule 1; or

(iv) a notice of requirement under any of sections 168, 168A, 189, and 189A.

Sections 140 and 141 were substituted, as from 10 August 2005, by section 79 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

141 Application of sections 141A to 150AA to coastal marine areas

(1) If a matter relates wholly to a coastal marine area, sections 141A to 150AA apply to the matter with the following modifications:

(a) references to the Minister must be read as references to the Minister of Conservation; and

(b) references in sections 148 and 149 to a decision must be read as references to a recommendation; and

(c) sections 148(3)(e) and (f) and 149(3)(e) and (f) must be read as one paragraph saying "the Minister of Conservation"; and

(d) section 119(1)(a), (2), (6), and (7) applies to a recommendation made under section 149, as if section 119(1)(a) read "a recommendation on an application for a coastal permit for a restricted coastal activity or an application for a coastal permit for an activity that is not a restricted coastal activity".

(2) If a matter relates partly to a coastal marine area, sections 141A to 150AA apply to the matter with the following modifications:

(a) references to the Minister must be read as references to the Minister for the Environment and the Minister of Conservation; and

(b) sections 148(3)(e) and (f) and 149(3)(e) and (f) must be read as one paragraph saying "the Minister for the Environment and the Minister of Conservation".

Subsections (3) to (5) were inserted, as from 1 August 2003, by section 57 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Sections 140 and 141 were substituted, as from 10 August 2005, by section 79 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

141A Minister's power to intervene

(1) This section applies when the Minister—

(a) receives a request to intervene on a matter from—

(i) 1 or more applicants; or

(ii) a local authority required to process and decide a matter; or

(b) decides to apply the section.

(2) The Minister—

(a) must have regard to the factors described in subsection (3); and

(b) may exercise 1 or more of the powers described in subsection (4).

(3) The factors are—

(a) the extent to which a matter is or is part of a proposal of national significance under section 141B(2); and

(b) whether the local authorities that would process and decide the matter if the Minister did not call it in—

(i) have the capacity to process and decide it; and

(ii) consider that the exercise of any of the powers in subsection (4) would be appropriate.

(4) The powers are—

(a) to decide not to intervene:

(b) to call in the matter under section 141B:

(c) to make a submission on the matter for the Crown:

(d) to appoint a project co-ordinator for a matter to advise the consent authority on anything relating to the matter:

(e) if the matter involves more than 1 consent authority, to direct the consent authorities to hold a joint hearing on the matter:

(f) if a consent authority appoints 1 or more hearings commissioners for a matter, to appoint 1 additional hearings commissioner for the matter.

(5) If the Minister gives a direction under subsection (4)(e),—

(a) the consent authorities to which it is given must hold the joint hearing; and

(b) section 102 applies, with the necessary modifications, to the hearing.

(6) If the Minister appoints a hearings commissioner under subsection (4)(f), the commissioner has the same powers, functions, and duties as a commissioner appointed by the consent authority.

Sections 141A to 141C were inserted, as from 10 August 2005, by section 79 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

141B Minister's power to call in matters that are or are part of proposals of national significance

(1) When 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 1 of the following directions:

(a) a direction that the matter be referred for decision to a board of inquiry under sections 146 to 149; or

(b) a direction that the matter, after the receipt of any submissions that the local authority or the Minister called for, be referred for decision to the Environment Court under section 150AA.

(2) 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 any structure, feature, place, or area of national significance; or

(d) affects or is likely to affect more than one region or district; or

(e) affects or is likely to affect or is relevant to New Zealand's international obligations to the global environment; or

(f) involves or is likely to involve technology, processes, or methods which are new to New Zealand and which may affect the environment; or

(g) results or is likely to result in or contribute to significant or irreversible changes to the environment, including the global environment; or

(h) is or is likely to be significant in terms of section 8 (Treaty of Waitangi).

Sections 141A to 141C were inserted, as from 10 August 2005, by section 79 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

141C Form and effect of Minister's direction

A direction by the Minister under section 141B(1) must—

(a) be in writing signed by the Minister; and

(b) state the reasons for calling the matter in; and

(c) be served on the local authority that would have been required to process and decide the matter if the Minister had not made the direction; and

(d) be served,—

(i) if the matter has not yet come before the local authority, as soon as practicable after the direction is made:

(ii) if the matter has come before the local authority and no hearing is to be held on it, before the authority notifies its decision or recommendation on the matter:

(iii) if the matter has come before the local authority and a hearing is to be held on it, at least 5 working days before the date fixed for the commencement of the hearing.

Sections 141A to 141C were inserted, as from 10 August 2005, by section 79 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

142 Minister may determine not to proceed

(1) Even though a direction has been served under section 141C, the Minister may determine not to proceed with the notification or hearing of the matter, acting under section 91 as if the Minister were a consent authority.

(2) When the Minister makes such a determination, he or she must notify the local authority and the applicant of it without delay.

Sections 142 to 147 were substituted, as from 10 August 2005, by section 80 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

143 Local authority's obligations

When a direction has been served under section 141C, the local authority must, without delay,—

(a) provide the Minister with—
  (i) all matters to which the direction relates; and
  (ii) all information and submissions received by the local authority that relate to the matters; and

(b) serve a copy of the direction on—
  (i) every person who is promoting the proposal; or
  (ii) every applicant; and

(c) give notice of the direction to—
  (i) each owner and occupier (other than an applicant) of any land to which a matter relates; and
  (ii) each owner or occupier of any land adjoining any land to which a matter relates; and
  (iii) every person who has made a submission on a matter to which the direction relates.

Subsections (2) to (4) were inserted, as from 1 August 2003, by section 58 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Sections 142 to 147 were substituted, as from 10 August 2005, by section 80 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

144 Minister to notify direction

(1) The Minister must give public notice of a direction under section 141C.

(2) Every notice for the purposes of this section must—
  (a) state the reasons for calling the matter in; and
  (b) describe the matters to which the direction applies; and
  (c) state where the matters, their accompanying information, and any further information may be viewed; and
  (d) state that submissions on the matters may be made by any person to the Minister; and
  (e) state the closing date for the receipt of submissions; and

(f) state the address for service of the Minister and each applicant.

Sections 142 to 147 were substituted, as from 10 August 2005, by section 80 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

145 Minister to receive submissions

(1) Any person may make a submission to the Minister about any matter to which a direction under section 141C relates, whether or not the person has made a submission to a local authority on the matter.

(2) Sections 96(2), (3), and (4) and 98 apply, with all necessary modifications, to submissions made under subsection (1), as if every reference to a consent authority were a reference to the Minister.

(3) Every submission on a matter made to a local authority is deemed to have been made to the Minister.

(4) The closing date for serving submissions on the Minister is 20 working days after notification of the direction under section 144.

Sections 142 to 147 were substituted, as from 10 August 2005, by section 80 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

146 Minister to appoint board of inquiry

(1) This section applies if the Minister makes a direction under section 141B(1)(a).

(2) As soon as is reasonably practicable after receiving a matter from a local authority under section 143, the Minister must appoint a board of inquiry to consider the matter.

(3) The Minister must—

(a) appoint no fewer than 3, and no more than 5, members to the board; and

(b) appoint 1 of the members as chairperson.

(4) In appointing members, the Minister must have regard to the need for the board to have available to it, from its members, knowledge, skill, and experience relating to—

(a) this Act; and

(b) matters relevant to the specific matters that are likely to come before the board; and

(c) tikanga Maori.

(5) The Minister must appoint a current, former, or retired Environment Judge as the chairperson.

Sections 142 to 147 were substituted, as from 10 August 2005, by section 80 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

147 Conduct of inquiry

(1) The Minister must, without delay, provide a board of inquiry appointed under section 146 with—

(a) all matters received by the Minister; and

(b) all submissions on the matters received by the Minister; and

(c) all other information received by the Minister and relevant to the inquiry.

(2) Section 101(1) to (3) applies to an inquiry, with the modifications described in subsections (3) and (4) and any other necessary modifications.

(3) Section 101(1) to (3) applies as if—

(a) a board of inquiry were a consent authority; and

(b) the conduct of an inquiry were the hearing of an application for a resource consent; and

(c) the closing date for submissions on the matter called in were the closing date for submissions on an application for a resource consent.

(4) Section 101(1) to (3) applies subject to the following:

(a) every inquiry must be held in public at a place near to the area to which the matter relates; and

(b) the factors to which the board of inquiry must have regard include—

(i) any relevant factor under section 141B(2); and

(ii) the reasons stated under section 141C(b).

(5) A board of inquiry considering a matter that is an application for a resource consent—

(a) has the same powers and duties as a local authority, except that the board—

(i) may permit cross-examination; and

(ii) must keep a full record of its hearings; and

(b) must apply sections 37, 92, and 104 to 112 as if it were a consent authority.

(6) A board of inquiry considering a matter that is a request for a change to be made to a regional plan or preparation of a regional plan under Schedule 1—

(a) has the same powers as a local authority under Part 2 of Schedule 1, except that—

(i) clauses 27 and 29(6) to (8) do not apply; and

(ii) the board may permit cross-examination; and

(iii) the board must keep a full record of its hearings; and

(b) must apply sections 37 and 66 to 70B as if it were a regional council.

(7) A board of inquiry considering a matter that is a change to a district plan under Schedule 1—

(a) has the same powers as a local authority under Part 2 of Schedule 1, except that—

(i) clauses 27 and 29(6) to (8) do not apply; and

(ii) the board may permit cross-examination; and

(iii) the board must keep a full record of its hearings; and

(b) must apply sections 37 and 74 to 77D as if it were a territorial authority.

(8) A board of inquiry considering a matter that is a notice of requirement under any of sections 168, 168A, 189, and 189A—

(a) has the same powers as a territorial authority, except that the board—

(i) may permit cross-examination; and

(ii) must keep a full record of its hearings; and

(b) must apply sections 37, 169 to 171, and 175 as if it were a territorial authority; and

(c) must apply section 173 as if it were a territorial authority, except that its statement of the time within which an appeal may be lodged must say that the appeal is under section 149A; and

(d) must consider whether to confirm the requirement, modify it, impose conditions on it, or withdraw it; and

(e) for the purposes of paragraph (d), has the same powers as—

(i) a requiring authority under section 172; or

(ii) a heritage protection authority under section 192.

Sections 142 to 147 were substituted, as from 10 August 2005, by section 80 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

148 Board to produce draft report

(1) As soon as practicable after a board of inquiry has completed an inquiry under section 147, it must—

(a) make its 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 the principal issues; and

(d) must include the findings of fact; and

(e) may recommend that changes be made to a plan, regional policy statement, national policy statement, or New Zealand coastal policy statement in addition to any changes that may result from the implementation of the draft decision; and

(f) may recommend that a national policy statement or a New Zealand coastal policy statement be issued or revoked, in addition to any action that may result from the implementation of the draft decision.

(3) The board must send a copy of the draft report to—

(a) the applicants to whom the report relates; and

(b) the local authority that received the matter; and

(c) any other relevant local authorities; and

(d) the persons who made submissions; and

(e) the Minister of Conservation, if the report relates to the functions of the Minister; and

(f) the Minister.

(4) The board must invite the persons to whom the draft report is sent to send their comments on any aspect of it to the board within 20 working days of the date of the invitation.

Sections 148 and 149 were substituted, as from 10 August 2005, by section 81 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

149 Board to produce final report

(1) As soon as practicable after the 20 working days referred to in section 148(4), the board of inquiry must—

(a) consider any comments received; and

(b) make its decision; and

(c) produce a written report.

(2) The report—

(a) must state the board's decision; and

(b) must give reasons for the decision; and

(c) must include the principal issues; and

(d) must include the findings of fact; and

(e) may recommend that changes be made to a plan, regional policy statement, national policy statement, or New Zealand coastal policy statement in addition to any changes that may result from the implementation of the decision; and

(f) may recommend that a national policy statement or a New Zealand coastal policy statement be issued or revoked, in addition to any action that may result from the implementation of the decision.

(3) The board must send a copy of the report to—

(a) the applicants to whom the report relates; and

(b) the local authority that received the matter; and

(c) any other relevant local authorities; and

(d) the persons who made submissions; and

(e) the Minister of Conservation, if the report relates to the functions of the Minister; and

(f) the Minister.

(4) The board must—

(a) publish the report; and

(b) give public notice of where and how copies of it can be obtained.

(5) If the board decides that a plan must be changed, the relevant local authority must deal with the decision under clause 16 of

Schedule 1 as if the decision were a direction of the Environment Court.

Sections 148 and 149 were substituted, as from 10 August 2005, by section 81 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

149A Appeals on questions of law

(1) A person described in section 149(3) may appeal to the High Court against a decision under section 149(1) on a question of law only.

(2) Sections 300 to 308 apply to the appeal, subject to the following:

(a) every reference in the sections to the Environment Court must be read as a reference to the board; and

(b) the 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.

Sections 149A and 149B were inserted, as from 10 August 2005, by section 81 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

149B Costs of process

(1) The Fees and Travelling Allowances Act 1951 applies to a board of inquiry appointed under section 146 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).

(2) A local authority may recover from an applicant the actual and reasonable costs incurred by the authority in complying with section 143.

(3) The Minister may recover from an applicant the actual and reasonable costs incurred by the Minister in exercising the Minister's powers under sections 140 to 150.

(4) The Minister may recover from an applicant the actual and reasonable costs incurred by a board of inquiry in exercising its powers under sections 147 to 149.

(5) Section 36(3A) and (4) applies to the recovery of costs under subsections (2) to (4) as if references to charges were references to the recovery of costs and, for subsections (3) and (4), references to the local authority were references to the Minister.

(6) A person may object under section 357B to a requirement to pay costs under any of subsections (2) to (4).

Sections 149A and 149B were inserted, as from 10 August 2005, by section 81 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

150 Residual powers of authorities

(1) Subsection (2) applies to the consent authority that would have decided an application for a resource consent, if the Minister had not made a direction under section 141C.

(2) The consent authority—

(a) has the powers in sections 127 to 132 in relation to the resource consent, but—

(i) must not exercise any of them without first obtaining the written consent of the Minister; and

(ii) must comply with any conditions imposed by the Minister on their exercise; and

(b) has all other functions, duties, and powers in relation to the consent as if it had granted the consent itself.

(3) Subsection (4) applies to the local authority that would have decided one of the following matters, if the Minister had not made a direction under section 141C:

(a) a request for a change to be made to a plan under Schedule 1; or

(b) a request for the preparation of a regional plan under Schedule 1; or

(c) a notice of requirement under any of sections 168, 168A, 169, and 189A.

(4) The local authority has all other functions, duties, and powers in relation to the request or requirement as if it had decided the request or requirement itself.

Section 150 was substituted, as from 10 August 2005, by section 82 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

150AA Reference to Environment Court

(1) This section applies if the Minister makes a direction under section 141B(1)(b).

(2) The matter is referred to the Environment Court by the applicant lodging a notice of motion and an affidavit under section 291(1).

(3) The applicant must—

(a) serve the notice of motion and the affidavit on—

(i) the local authority; and

(ii) every person who made a submission on the matter; and

(b) serve the documents as soon as reasonably practicable after lodging them; and

(c) tell the Registrar when the documents have been served.

(4) Section 291(3) and (4) apply to proceedings under this section.

(5) The Minister must supply to the Court the documents provided to the Minister under section 143(a).

(6) The Court must—

(a) consider the documents supplied to it under subsection (5); and

(b) have regard to the Minister's reasons for calling the matter in under section 141B; and

(c) have regard to the things to which a local authority would have regard if it were deciding the matter.

Section 150AA was inserted, as from 10 August 2005, by section 83 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Part 6A
Aquaculture moratorium

Part 6A (comprising sections 150A to 150F) was inserted, as from 26 March 2002, by section 9 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.

moratorium: paragraph (b)(i) of this definition was substituted, as from 19 March 2004, by section 5 Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004 (2004 No 5).

Part 6A (comprising sections 150A to 150F) was inserted, as from 26 March 2002, by section 9 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

150B Moratorium

(1) Subsection (2) applies to—

(a) an application that requires 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 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 notify the application under section 94.

(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.

Part 6A (comprising sections 150A to 150F) was inserted, as from 26 March 2002, by section 9 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

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 aquacul-

ture 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.

Part 6A (comprising sections 150A to 150F) was inserted, as from 26 March 2002, by section 9 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

Subsection (1) was amended, as from 19 March 2004, by section 6(1) Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004 (2004 No 5) by substituting the expression "31 December 2004" for the words "the date that is 2 years after the commencement of the Resource Management (Aquaculture Moratorium) Amendment Act 2002".

Subsection (3) was amended, as from 19 March 2004, by section 6(2) Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004 (2004 No 5) by substituting the expression "40" for the expression "20".

Subsection (4) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "sections 37 and 37A apply" for the words "section 37 applies". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

150D Pending applications to be considered under rules as at end of moratorium

[Repealed]

Part 6A (comprising sections 150A to 150F) was inserted, as from 26 March 2002, by section 9 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

Subsection (3) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "20" for the expression "20A". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Sections 150D and 150E were repealed, as from 1 January 2005, by section 12 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

150E Transitional provision

[Repealed]

Part 6A (comprising sections 150A to 150F) was inserted, as from 26 March 2002, by section 9 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

Sections 150D and 150E were repealed, as from 1 January 2005, by section 12 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.

Part 6A (comprising sections 150A to 150F) was inserted, as from 26 March 2002, by section 9 Resource Management (Aquaculture Moratorium) Amendment Act 2002 (2002 No 5).

Certain coastal permits continued

This heading was inserted, as from 19 March 2004, by section 7 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 was inserted, as from 19 March 2004, by section 7 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 was inserted, as from 1 January 2005, by section 13 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 one or more daily newspapers circulating in the main metropolitan areas; and

(b) A notice published in—

(i) One or more daily newspapers circulating in the region to which any Order in Council relates; or

(ii) One 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, in respect of any specified part of the coastal marine area, direct that a consent authority shall not grant a coastal permit in respect of any land of the Crown in

that specified part which would authorise the holder of the permit (if granted) to—

(a)

(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 subsection (2) unless the Minister considers—

(a) 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); and

(b) That it is appropriate to do so after having regard to the Crown's interests in land of the Crown in the coastal marine area.

(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.

Subsection (1) was amended, as from 1 January 2005, by section 14(1)(b) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by omitting the expression "occupation,".

Subsection (1)(a) was repealed, as from 1 January 2005, by section 14(1)(a) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subsection (1)(b) was amended, as from 7 July 1993, by section 80 Resource Management Amendment Act 1993 (1993 No 65) by inserting the word "shell,".

Subsection (3) was amended, as from 1 January 2005, by section 14(2) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by substituting the expression "subsection (1)(c)" for the expression "subsection (1)(a) or (c)".

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 or section 426:

  (iii) Any permitted activity in the coastal marine area:

  (iv) Any other lawful activity.

Paragraph (b)(i) was amended, as from 20 August 1998, by section 16 Resource Management Amendment Act 1994 (1994 No 105) by inserting the words "or section 15A". *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Paragraph (b)(i) was amended, as from 20 August 1998, by section 33(1) Resource Management Amendment Act 1997 (1997 No 104) by amending the expression "15A and 15B" for the expression "and 15A". *See* clause 2 Resource Management Amendment Act 1997 Commencement Order 1998 (SR 1998/210). The amending authority incorrectly amended paragraph (c), and it would appear that the intention was to substitute the words "section 14 or section 15, or sections 15A and 15B" for the words "section 14 or section 15 or section 15A".

Paragraph (b)(i) and (b)(ii) were substituted, as from 1 August 2003, by section 59 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraph (b)(ii) was amended, as from 1 January 2005, by section 15(1) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by substituting the words "section 152(1)(b) or (c)" for the words "section 152(1)(a) to (c)".

Paragraph (c) was amended, as from 7 July 1993, by section 81 Resource Management Amendment Act 1993 (1993 No 65) by inserting the expression "390A, 390C,".

Paragraph (c) was amended, as from 1 January 2005, by section 15(2) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by substituting the expression "and 395" for the expression "395, and 397".

Paragraph (d) was substituted, as from 17 December 1997, by section 33(2) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

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) The appropriate regional manager for the Ministry for the Environment:

  (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.

Paragraph (b)(iv) was amended, as from 10 August 2005, by section 84 Resource Management Amendment Act 2005 (2005 No 87) by omitting the words

"and tribal runanga". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 respect of any land of the Crown in that part:

(a)

(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 was amended, as from 1 January 2005, by section 16(b) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by omitting the expression "occupation,".

Paragraph (b) was amended, as from 7 July 1993, by section 82 Resource Management Amendment Act 1993 (1993 No 65) by inserting the word "shell,".

Paragraph (a) was repealed, as from 1 January 2005, by section 16(a) Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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)

(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.

Subsection (3)(a) was repealed, as from 1 January 2005, by section 17 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)

(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)

(iii) Any royalty for the extraction of material, and any proposed formula for adjustment of royalty.

(1A)

(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.

Subsection (1A) was inserted, as from 17 December 1997, by section 34 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsections (1)(b), (1)(d)(ii), and (1A) were repealed, as from 1 January 2005, by section 18 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)

Subsection (2)(a) and (b) was substituted, as from 1 January 2005, by section 19 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subsection (2)(c) was repealed, as from 1 January 2005, by section 19 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.

The words "Environment Court" and "Court" in subsection (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" and "Tribunal", pursuant to section 6(2)(a) 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 the 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 percent of the initial payment to be refunded to that person from the 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.

Part 7A
Occupation of coastal marine area

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subpart 1—Aquaculture management areas and authorisations

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, or an application for a coastal permit, to occupy space in an aquaculture management area for activities that are not 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Aquaculture management areas and occupation of coastal marine area

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) To avoid doubt,—

(a) subsections (2) and (4)—

(i) do not apply to a proposed regional coastal plan notified under clause 5 of Schedule 1 before the commencement of this Part; but

(ii) do apply to a variation to a proposed regional coastal plan referred to in subparagraph (i) if the variation is notified on or after the commencement of this Part:

(b) this section applies subject to section 12A.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Allocation of space in coastal marine area

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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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).

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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 vested in the Crown or a regional council in a coastal marine area.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Section 165H was amended, as from 10 August 2005, by section 85 Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "a rule in relation to" after the words "provide for". *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

165K Applications not to be made or granted unless applicant holds authorisation

If this Act or a regional coastal plan provides for space in the coastal marine area to be allocated by tender of authorisations or other allocation of authorisations, a person must not apply for, and a consent authority must not grant, a coastal permit authorising occupation of a space in a coastal marine area unless the person is the holder of an authorisation for the space.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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 with 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Allocation by offer of authorisations

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(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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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(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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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 Ngai 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 Ngati Awa Claims Settlement Act 2005:
(f) section 92 of the Ngati 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subsection (2)(d) was inserted, as from 28 June 2005, by section 112 Ngaa Rauru Kiitahi Claims Settlement Act 2005 (2005 No 84).

Subsection (2)(e) was inserted, as from 10 August 2005, by section 86 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2)(f) was inserted, as from 22 November 2006, by section 98 Ngati 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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 the 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subpart 2—Privately initiated plan changes

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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subsection (2) was amended, as from 10 August 2005, by section 87 Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "clauses 3 to 3B of Schedule 1, and those clauses apply" for the words "clause 3 of Schedule 1, and that clause applies". *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subsection (1A) was inserted, as from 10 August 2005, by section 88 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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(a) payable by each person who requested a change recognising the proportion of the available space to which the person's request relates.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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).

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

Subpart 3—Order in which applications by existing consent holders are to be processed

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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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.

Part 7A (comprising sections 165A to 165ZJ) was inserted, as from 1 January 2005, by section 20 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

Designation: this definition was amended, as from 7 July 1993, by section 83(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the expression "or section 168A".

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, 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

Network utility operator: paragraph (b) was substituted, as from 7 July 1993, by section 83(2) Resource Management Amendment Act 1993 (1993 No 65).

Network utility operator: paragraph (b) was substituted, as from 20 December 2001 by section 158 Telecommunications Act 2001 (2001 No 103).

Network utility operator: paragraph (c) was substituted, as from 1 April 1993, by section 173(2) Electricity Act 1992 (1992 No 122).

Network utility operator: paragraph (c) was substituted, as from 7 July 1993, by section 83(2) Resource Management Amendment Act 1993 (1993 No 65).

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.

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 was substituted, as from 7 July 1993, by section 84 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)

(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.

Subsection (1) was amended, as from 1 August 2003, by section 60(1) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "in the prescribed form" after the words "give notice". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2) was amended, as from 7 July 1993, by section 85 Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "for the purposes".

Subsection (2) was amended, as from 1 August 2003, by section 60(2) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "in the prescribed form" after the words "give notice". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(a) was substituted, as from 7 July 1993, by section 85 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was repealed, as from 1 August 2003, by section 60(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

168A Notice of requirement by territorial authority

(1) When a territorial authority proposes to issue notice of a 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—

it shall notify the requirement in accordance with section 93(2); and the provisions of section 168, with all necessary modifications, shall apply to such notice.

(2) Sections , 96, 97, and 99 to 103 shall apply, with all necessary modifications, in respect of a notice under subsection (1), as if every reference in those sections—

(a) To a resource consent were a reference to the requirement; and

(b) To an applicant or a consent authority were a reference to the territorial authority; and

(c) To an application for a resource consent were a reference to the notice under subsection (1).

(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 was inserted, as from 7 July 1993, by section 86 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was amended, as from 1 August 2003, by section 61(1) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "notify the requirement in accordance with section 93(2)" for the words "publicly notify the requirement". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2) was amended, as from 17 December 1997, by section 35(1) Resource Management Amendment Act 1997 (1997 No 104) by inserting the expression "93,". *See* section 78 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 1 August 2003, by section 61(2) Resource Management Amendment Act 2003 (2003 No 23) by omitting the expression "93". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(b) was amended, as from 17 December 1997, by section 35(2) Resource Management Amendment Act 1997 (1997 No 104) by inserting the words "or a consent authority". *See* section 78 of that Act as to the transitional provisions.

Subsection (3) was substituted, as from 1 August 2003, by section 61(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4) was amended, as from 17 December 1997, by section 35(3) Resource Management Amendment Act 1997 (1997 No 104) by substituting the

expression ", 174, and 175" for the expression "and 174". *See* section 78 of that Act as to the transitional provisions.

Subsection (4) was substituted, as from 1 August 2003, by section 61(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5) was inserted, as from 1 August 2003, by section 61(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

169 Further information, public notification, submissions, and hearing

(1) Subject to section 170, sections 92, 92A, 92B, and 95 to 103 apply with all necessary modifications in respect of a requirement notified under section 168.

(2) A territorial authority must notify the requirement in accordance with section 93(2).

Section 169 was substituted, as from 1 August 2003, by section 62 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1) was amended, as from 10 August 2005, by section 89 Resource Management Amendment Act 2005 (2005 No 87) by substituting the words ", 92A, 92B, and 95 to 103" for the words ", 95 to 103, and 115". *See* sections 131 to 135 of that Act as to the transitional provisions.

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

(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).

Subsection (1) was amended, as from 7 July 1993, by section 87 Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "Subject to Part 2, when" for the word "When", and by omitting from para (d) the expression "; and".

Subsection (1)(d) was substituted, as from 17 December 1997, by section 36(1) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (1)(e) was repealed, as from 7 July 1993, by section 87(c) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2)(a) was substituted, as from 17 December 1997, by section 36(2) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Section 171 was substituted, as from 1 August 2003, by section 63 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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.

Subsection (1)(b) was substituted, as from 7 July 1993, by section 88 Resource Management Amendment Act 1993 (1993 No 65).

Section 173 was substituted, as from 1 August 2003, by section 64 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

174 Appeals

(1) Any one 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 Environment Court.

(4) In determining an appeal, the Environment Court shall have regard to the matters set out in section 171 and may—

(a) Confirm or cancel a requirement; or

(b) Modify a requirement in such manner, or impose such conditions, as the Environment Court thinks fit.

The words "Environment Court" in subsections (1) to (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (4)(b) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

175 Designation to be provided for in district plan

(1) Where—

(a) No appeal is lodged against a decision of a requiring authority under section 172 within the time permitted by that section; or

(b) An appeal is lodged but is withdrawn or dismissed; or

(c) An appeal is lodged and the Environment Court confirms or modifies the requirement—

the territorial authority shall, as soon as reasonably practicable and without further formality,—

(d) 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

(e) State in its district plan and in any proposed district plan the name of the requiring authority which has the benefit of the designation.

(f)

(2) The provisions of Schedule 1 shall not apply to any designation in a district plan or proposed district plan under this section.

(3)

The words "Environment Court" in subsection (1)(c) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1)(d) was amended, as from 7 July 1993, by section 89(1)(a) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "and any proposed district plan".

Subsection (1)(e) was substituted, as from 7 July 1993, by section 89(1)(b) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(f) was repealed, as from 7 July 1993, by section 89(1)(c) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2) was substituted, as from 7 July 1993, by section 89(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was repealed, as from 7 July 1993, by section 89(2) Resource Management Amendment Act 1993 (1993 No 65).

176 Effect of designation

(1) If a designation is included in a district plan, then—

(a) section 9(1) 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 described in section 9(4); 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.

Subsection (1) was amended, as from 7 July 1993, by section 90(1) Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "under section 175", by substituting the words "in the district" for the words "in any", and by inserting the words ", but subject to sections 9(3) and 11 to 15,".

Subsection (1) was amended, as from 17 December 1997, by section 37(1) Resource Management Amendment Act 1997 (1997 No 104) by inserting the words "or any proposed district plan" and the expression "and 176A". *See* section 78 of that Act as to the transitional provisions.

Subsection (1) was substituted, as from 1 August 2003, by section 65 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2) was amended, as from 7 July 1993, by section 90(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the word "district".

Subsection (2) was amended, as from 17 December 1997, by section 37(2) Resource Management Amendment Act 1997 (1997 No 104) by inserting the words "or proposed district plan". *See* section 78 of that Act as to the transitional provisions.

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 was inserted, as from 17 December 1997, by section 38 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

177 Land subject to existing designation or heritage order

(1) Subject to sections 9(3) 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.

Subsection (1) was amended, as from 7 July 1993, by section 91 Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "Subject to sections 9(3) and 11 to 15, where" for the word "Where", by omitting the words "under section 175", and by substituting in paragraphs (a) and (b) the words "in accordance with" for the words "consistent with".

178 Interim effect of requirement

(1) Where, under section 168 or section 168A or clause 4 of Schedule 1, a requiring authority has given notice of a requirement for a designation for a public work or project or work, then during the period described in subsection (3), regardless of the provisions of any plan or resource consent, no person may, without the prior written consent of the requiring authority, do anything (including the things referred to in subparagraphs (i) to (iii) of section 176(1)(b)) that would prevent or hinder the public work or project or work.

(2) Subsection (1) does not prevent any authority responsible for an earlier designation or heritage order from doing anything that is in accordance with the earlier designation or order.

(3) For the purposes of subsection (1), the period commences on the date on which notice of the requirement is given to the territorial authority under section 168 or clause 4 of Schedule 1, or the date a territorial authority resolves to publicly notify its own requirement under section 168A or to include its own

requirement in a proposed plan under clause 4 of Schedule 1, and ends on the earliest of the following days:

(a) The day on which the requirement is withdrawn by the requiring authority:

(b) The day on which the requirement is cancelled by the Environment Court:

(c) The day on which the designation is included in the district plan.

(4) No person who contravenes subsection (1) during the period described in subsection (5) commits an offence against this Act unless that person knew, or could reasonably have been expected to have known, at the time of the contravention, that the requiring authority had given notice of the requirement.

(5) For the purposes of subsection (4), the period commences on the date on which the requiring authority gives notice of the requirement under section 168 or clause 4 of Schedule 1 and ends on the day upon which the territorial authority publicly notifies the requirement under that section or the proposed plan under clause 5 of that Schedule.

(6) Subsection (4) applies notwithstanding anything to the contrary in section 338 and section 341 (which deal with offences).

Subsection (1) was amended, as from 7 July 1993, by section 92(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "section 168 or section 168A" for the expression "section 168".

Subsection (2) was amended, as from 7 July 1993, by section 92(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "in accordance with" for the words "consistent with".

Subsection (3) was amended, as from 7 July 1993, by section 92(3) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words ", or the date a territorial authority resolves to publicly notify its own requirement under section 168A or to include its own requirement in a proposed plan under clause 4 of Schedule 1,".

The words "Environment Court" in subsection (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

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) or section 177(2) or section 178(1), or who has been granted such consent subject to con-

ditions, 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 sections 176(1)(b), 177(2), or 178(1).

(3) In considering an appeal under this section, the Environment 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 Environment Court thinks fit.

The words "Environment Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (3) was substituted, as from 7 July 1993, by section 93 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsection (3) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) 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(1)(e), the transfer shall, without further formality, be noted in the district plan.

Section 180 was substituted, as from 7 July 1993, by section 94 Resource Management Amendment Act 1993 (1993 No 65).

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.

Subsection (3) was amended, as from 1 August 2003, by section 66(1) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "or a requirement in its proposed district plan" after the word "plan". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was amended, as from 1 August 2003, by section 66(3) Resource Management Amendment Act 2003 (2003 No 23) by substituting the word "alteration" for the word "change" in the last place where it appeared. *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3)(a)(ii) was amended, as from 1 August 2003, by section 66(2) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "or requirement" after the word "designation". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4) was inserted, as from 7 July 1993, by section 95 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (4) was amended, as from 1 August 2003, by section 66(4) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "or requirement" after the word "designation". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 further formality, 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 was substituted, as from 7 July 1993, by section 96 Resource Management Amendment Act 1993 (1993 No 65).

183 Review of designation which has not lapsed

[Repealed]

Section 183 was repealed, as from 7 July 1993, by section 97 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).

Subsection (1) was amended, as from 7 July 1993, by section 98 Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "under section 175".

Subsection (3) was inserted, as from 10 August 2005, by section 90 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 was inserted, as from 7 July 1993, by section 99 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 Environment 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.

The words "Environment Court" in subsections (1) and (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (3)(b)(ii) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by inserting the words ", civil union partner, or de facto partner" after the word "spouse".

The words "Environment Court" in subsection (4) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (5) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

Subsection (1) was substituted, as from 1 August 2003, by section 67 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 Order: this definition was amended, as from 7 July 1993, by section 100(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "section 189 or section 189A" for the expression "section 189".

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.

Heritage protection authority: paragraph (d) of this definition was amended, as from 7 July 1993, by section 100(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "A body corporate" for the words "Any other person".

188 Application to become a 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)

Subsection (3) was substituted, as from 7 July 1993, by section 101 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (4) was substituted, as from 7 July 1993, by section 101 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (5) was substituted, as from 7 July 1993, by section 101 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (6) was substituted, as from 7 July 1993, by section 101 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (7) was substituted, as from 7 July 1993, by section 101 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (8) was repealed, as from 7 July 1993, by section 101 Resource Management Amendment Act 1993 (1993 No 65).

189 Notice of requirement to territorial authority

(1) A heritage protection authority may give notice 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) A notice under subsection (1) shall be in the prescribed form and shall include—

(a) The reason why the heritage order is needed; and

(b) A description of the place and surrounding area to which the requirement applies; and

(c) A specification of any restrictive conditions applying to the place or surrounding area; and

(d) A statement of how the heritage order will affect the present use of the place and surrounding area, and the extent to which that and other uses may be continued or commenced without nullifying the effect of the heritage order; and

(e) Any information required to be included in the notice by a plan or regulations; and

(f) Where consultation with any person likely to be affected by the heritage order—

(i) Has taken place, a statement giving details of such consultation, including any arrangements in respect of the upkeep of the place and surrounding area; or

(ii) Has not taken place, a statement giving the reasons why such consultation has not taken place.

(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.

Subsection (3)(d) was substituted, as from 7 July 1993, by section 102 Resource Management Amendment Act 1993 (1993 No 65).

189A Notice of requirement by territorial authority

(1) A territorial authority may publicly notify, in accordance with section 93(2), a requirement for a heritage order within its own district for the purposes specified in section 189(1); and the provisions of section 189 shall apply, with all necessary modifications, to such notice.

(2) Sections 96, 97, and 99 to 103 shall apply, with all necessary modifications, in respect of a notice under subsection (1), as if every reference in those sections—

(a) To a resource consent were a reference to the requirement; and

(b) To an applicant were a reference to the territorial authority; and

(c) To an application for a resource consent were a reference to the notice under subsection (1).

(3) In considering a requirement under this section, a territorial authority shall have regard to the matters set out in section 191 and all submissions, and may—

(a) Confirm or withdraw a requirement; or

(b) Modify a requirement in such a manner, or impose such conditions, as the territorial authority thinks fit.

Section 189A was inserted, as from 7 July 1993, by section 103 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "93(2)" for the expression "93". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

190 Further information, public notification, submissions, and hearing

(1) Sections 92, 92A, 92B, and 95 to 103 apply, with all necessary modifications, in respect of a requirement made under section 189 as if every reference in those sections—

(a) To a resource consent were a reference to the requirement; and

(b) To an applicant were a reference to the requiring authority; and

(c) To an application for a resource consent were a reference to the notice of the requirement under section 189; and

(d) To a consent authority were a reference to the territorial authority; and

(e) To a decision on the application for a resource consent were a reference to a recommendation by the territorial authority under section 191.

(2) A territorial authority must notify the requirement in accordance with section 93(2).

Subsection (1) was amended, as from 1 August 2003, by section 68(1) Resource Management Amendment Act 2003 (2003 No 23) by omitting the expression "93,". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1) was amended, as from 10 August 2005, by section 91 Resource Management Amendment Act 2005 (2005 No 87) by inserting the expression "92A, 92B," after the expression "92,". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was inserted, as from 1 August 2003, by section 68(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 supplied under section 190), 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).

Subsection (1) was amended, as from 7 July 1993, by section 104 Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "Subject to Part 2, when" for the word "When", and by omitting from paragraph (e) the words "Part 2 and".

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) Section 181, which relates to the alteration of designations.

Section 192 was amended, as from 7 July 1993, by section 105(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "section 189 or section 189A" for the expression "section 189". Paragraph (aa) was inserted by section 105(2) of the same amending Act.

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 described in section 9(4); 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.

193A Land subject to existing heritage order or designation

(1) Subject to sections 9(3) 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 was inserted, as from 7 July 1993, by section 106 Resource Management Amendment Act 1993 (1993 No 65).

194 Interim effect of requirement

(1) Where a heritage protection authority has given notice of a requirement for a heritage order during the period described in subsection (2) then, regardless of the provisions of any plan or resource consent, no person may, without the prior written consent of the heritage protection authority, do anything (including the things referred to in paragraphs (a) to (c) of section 193) that would wholly or partly nullify the effect of the heritage order.

(2) For the purposes of subsection (1), the period commences on the date on which the heritage protection authority gives notice of the requirement under section 189 or section 189A and ends on the earliest of the following days:

(a) The day on which the requirement is withdrawn by the heritage protection authority:

(b) The day on which the requirement is cancelled by the Environment Court:

(c) The day on which the heritage order is included in the district plan.

(3) No person who contravenes subsection (1) during the period described in subsection (4) commits an offence against this Act unless that person knew, or could reasonably have been expected to have known, at the time of the contravention, that the heritage protection authority had given notice of the requirement.

(4) For the purposes of subsection (3), the period commences on the date on which the heritage protection authority gives notice of the requirement under section 189 or section 189A or clause 4 of Schedule 1 and ends on the day upon which the territorial authority publicly notifies the requirement under that section or the proposed plan under clause 5 of that Schedule.

(5) Subsection (3) applies notwithstanding anything to the contrary in section 338 and section 341 (which deal with offences).

Subsections (2) and (4) were amended, as from 7 July 1993, by section 107(1) and (2) Resource Management Amendment Act 1993 (1993 No 65) respectively by inserting the expression "or section 189A".

The words "Environment Court" in subsection (2)(b) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

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 Environment 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 Environment Court thinks fit.

The words "Environment Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (3) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

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.

Paragraph (b) was amended, as from 7 July 1993, by section 108 Resource Management Amendment Act 1993 (1993 No 65) by adding the words "or after the territorial authority gives notice of the removal of its heritage order in its own district".

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.

Section 40 Historic Places Act 1980 allowed the acquisition of land subject to a protection notice if necessary to give effect to a Tribunal order under section 125C Town and Country Planning Act 1977.

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 Environment 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 Environment Court may direct the owner to take further action to try to sell the estate or interest in the land.

(3) If the Environment 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 of Lands 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 of Lands 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.

Subsection (1) was amended, as from 7 July 1993, by section 109 Resource Management Amendment Act 1993 (1993 No 65) by inserting the expression "or section 189A".

Subsection (1)(a) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by inserting the words ", civil union partner, or de facto partner" after the word "spouse".

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsections (1) to (3) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

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.

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(2) and (4), 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.

(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.

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) Every special tribunal shall have, in relation to the exercise of its functions and powers under this Act, the same immunities and privileges as are possessed by a District Court Judge in the exercise of his or her civil jurisdiction.

(3) Sections 39 to 42 and 99 to 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.

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.

The section was amended, as from 7 July 1993, by section 110(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the word "other", and by section 110(2) of the same amending Act by substituting the words "district plan, and any proposed plan" for the words "and district plan" in paragraph (c).

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.

The words "Environment Court" in subsections (1) to (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

210 Environment Court to hold inquiry

If one or more submissions are lodged with the Environment Court in accordance with section 209, the Environment Court shall conduct a public inquiry in respect of the report to which the submissions relate.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 was based on sections 20C(4) and 20G(3) Water and Soil Conservation Act 1967.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 was substituted, as from 7 July 1993, by section 111 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in section 212 were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 Court thinks fit.

Section 213 was substituted, as from 7 July 1993, by section 112 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" and "Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" and "Tribunal" pursuant to section 6(2)(a) 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.

The words "Environment Court" in subsection (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

Subsection (2)(a) was amended, as from 7 July 1993, by section 113(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words ", coastal permit,".

Subsection (2)(b) was amended, as from 7 July 1993, by section 113(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "a coastal permit," and the words "the grant of any such permit or".

Subsection (2)(c) was amended, as from 7 July 1993, by section 113(3) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words ", coastal permit,".

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 a District Land Registrar 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 a District Land Registrar for the issue of a separate certificate of title for any part of a unit on a unit plan; or

(b) An application to a District Land Registrar 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 one certificate of title or for which one certificate of title could be issued under that Act; or

(b) Not subject to that Act and was acquired by its owner under one 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.

Subsection (1)(a)(iii) was amended, as from 7 July 1993, by section 114(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "; unless that part of the allotment is in the coastal marine area, and that lease is allowed for a term of 20 years or longer by a coastal permit or by a rule in a regional coastal plan; or" for the expression "; or".

Subsection (1)(a)(iii) was substituted, as from 1 August 2003, by section 69 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(a)(v) was amended, as from 7 July 1993, by section 114(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "the deposit of a unit plan, or".

Subsection (2)(b) was amended, as from 1 July 1994, by section 4 Land Transfer Amendment Act 1993 (1993 No 124) by substituting the reference to "Part 7A of the Land Transfer Act 1952" for a reference to "Part 1 of the Companies Amendment Act 1964".

Subsection (4) was inserted, as from 17 December 1997, by section 39 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

219 Information to accompany applications for subdivision consents

[Repealed]

Paragraph (c) was amended, as from 7 July 1993, by section 115(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "231" for the expression "230".

Paragraphs (ca) and (cb) were inserted, as from 7 July 1993, by section 115(2) of the same amending Act.

Paragraph (d) was amended, as from 7 July 1993, by section 115(3) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "237A" for the expression "235".

Section 219 was repealed, as from 1 August 2003, by section 70 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 one 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 one 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 District Land Registrar as to the practicality of that condition. If the District Land Registrar 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 District Land Registrar advises are practical in the circumstances.

Subsection (1) was amended, as from 7 July 1993, by section 116 Resource Management Amendment Act 1993 (1993 No 65) by substituting para (a) and by inserting paras (aa), (ab), and (ac).

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 shall be authenticated by the territorial authority under section 252 of the Local Government Act 1974.

(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 District Land Registrar 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.

Subsection (3) was substituted, as from 10 August 2005, by section 92(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (3A) was inserted, as from 10 August 2005, by section 92(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (5) was amended, as from 10 August 2005, by section 92(2) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "after an application or review" for the words "by any agreement". *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Subsection (1) was amended, as from 17 December 1997, by section 40 Resource Management Amendment Act 1997 (1997 No 104) by inserting the words "or on the making of a financial contribution (as defined in section 108(9))" and the words "or make the financial contribution (as the case may be)". *See* section 78 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "108A" for the expression "108(6)". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5) was amended, as from 7 July 1993, by section 117 Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "contributions of money or land (including esplanade reserves and esplanade strips)" for the words "the making of financial contributions (whether in land or money)".

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.

Subsection (1A) was inserted, as from 1 August 2003, by section 71 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2) was amended, as from 7 July 1993, by section 118 Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "237, 237A" for the expression "230, 235".

Subsection (3) was amended, as from 17 December 1997, by section 41 Resource Management Amendment Act 1997 (1997 No 104) by substituting the words "the principal administrative officer or other authorised officer of the territorial authority must sign a certificate to that effect on" and the words "The signed certificate" for the words "it shall affix its common seal to" and the words "The seal of the authority" respectively. See section 78 of that Act as to the transitional provisions.

Subsection (3) was substituted, as from 1 June 2002, by section 65(4) Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Subsection (3) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "chief executive" for the words "principal administrative officer". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsection (4) was substituted, as from 1 June 2002, by section 65(4) Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Subsections (5) and (6) were inserted, as from 1 June 2002, by section 65(4) 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 under the Land Transfer Act 1952 or with the Registrar of Deeds for the purposes of section 11(1)(a) unless—

(a)

(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 District Land Registrar or Registrar of Deeds, 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 District Land Registrar or the Registrar of Deeds, as the case may require, 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 District Land Registrar or the Registrar of Deeds, as the case may require, 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 satisfied 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 authenticated by the territorial authority under section 252 of the Local Government Act 1974 is lodged with the District Land Registrar or Registrar of Deeds, as the case may require; and

(g) Where land is shown upon the survey plan to be subject to an esplanade strip, there is lodged for registration with the District Land Registrar or the Registrar of Deeds, as the case may be, an instrument creating that strip; and

(h) less than 3 years has elapsed since the territorial authority approved the plan under section 223.

Paragraph (a) was repealed, as from 1 June 2002, by section 65(4) Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11).

Paragraph (b) was amended, as from 7 July 1993, by section 119(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting in subparas

(i) and (ii) the words ", including any encumbrance, in" for the words "in or encumbrance on".

Paragraph (c) was amended, as from 7 July 1993, by section 119(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or other authorised officer".

Paragraph (c) was amended, as from 1 June 2002, by section 65(4) Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11), by inserting the words ", it has approved the survey plan under section 223 (which approval states the date of the approval), and" after the words "stating that". *See* section 78 of that Act as to the transitional provisions.

Paragraph (c) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "chief executive" for the words "principal administrative officer". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Paragraph (c)(iii) was amended, as from 17 December 1997, by section 42(1) Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "108(2)(b)" for the expression "108(1)(b)".

Paragraphs (d) and (e) were amended, as from 7 July 1993, by section 119(2) Resource Management Amendment Act 1993 (1993 No 65) by adding the word "; and".

Paragraph (f) was inserted, as from 1 July 1992, by section 92(1) Building Act 1991 (1991 No 150).

Paragraph (f) was substituted, as from 7 July 1993, by section 119(3) Resource Management Amendment Act 1993 (1993 No 65).

Paragraph (f) was amended, as from 17 December 1997, by section 42(2) Resource Management Amendment Act 1997 (1997 No 104) by substituting the words "existing building or part of an existing building (including any building or part thereof under construction)" for the words "building or part of a building". *See* section 78 of that Act as to the transitional provisions.

Paragraph (f) was amended, as from 31 March 2005, by section 414 Building Act 2004 (2004 No 72) by substituting the words "section 116(3) of the Building Act 2004" for the words "section 46(4) of the Building Act 1991". *See* subpart 4 of Part 5 of that Act (comprising sections 416 to 451) as to the transitional provisions.

Paragraph (f) was amended, as from 14 April 2005. by section 14(2) Building Amendment Act 2005 (2005 No 31) by substituting the words "described in section 116A" for the words "specified in section 116(3)".

Paragraph (g) was inserted, as from 7 July 1993, by section 119(2) Resource Management Amendment Act 1993 (1993 No 65).

Paragraph (g) was amended, as from 1 June 2002, by section 65(4) Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 (2002 No 11), by inserting the expression "; and".

Paragraph (h) was inserted, as from 1 June 2002, by section 65(4) 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 one 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 Restriction upon issue of certificates of title for subdivision

(1) A District Land Registrar 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).

Subsection (1)(ba), (bb), and (bc) were inserted, as from 7 July 1993, by section 120 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(e) was amended, as from 1 August 2003, by section 72 Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "given a certificate signed by the principal administrative officer or other authorised officer to the effect" for the words "certified on the survey plan or a copy of the survey plan". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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.

(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 District Land Registrar 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 was inserted, as from 7 July 1993, by section 121 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(c) was inserted, as from 1 August 2003, by section 73 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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.

Subsection (1) was amended, as from 17 December 1997, by section 43 Resource Management Amendment Act 1997 (1997 No 104) by omitting the expression "240, 241,". *See* section 78 of that Act as to the transitional provisions.

Subsection (2) was inserted, as from 7 July 1993, by section 122 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 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 District Land Registrar 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 District Land Registrar 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.

Subsection (1) was amended, as from 7 July 1993, by section 123(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "of land not subject to the Land Transfer Act 1952".

Subsection (1)(b)(i) was amended, as from 7 July 1993, by section 123(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words ", or a Reserve . . . Wildlife Act 1953".

Subsection (1)(b)(ii) was amended, as from 7 July 1993, by section 123(3) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or other officer . . . Surveyor-General".

Esplanade reserves

229 Purposes of esplanade reserves and esplanade strips

An esplanade reserve or an esplanade strip has one 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.

Sections 229 to 237 were substituted, as from 7 July 1993, by section 124 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, 405A, and clause 5 of Part 2 of Schedule 2, 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.

Sections 229 to 237 were substituted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

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.

Sections 229 to 237 were substituted, as from 7 July 1993, by section 124 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 District Land Registrar, 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.

Sections 229 to 237 were substituted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

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.

Sections 229 to 237 were substituted, as from 7 July 1993, by section 124 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 District Land Registrar 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 District Land Registrar 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.

Sections 229 to 237 were substituted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (7) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "chief executive" for the words "principal administrative officer". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

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 District Land Registrar unless every person having a registered interest in the land has endorsed his or her consent on the instrument.

Sections 229 to 237 were substituted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was amended, as from 17 December 1997, by section 44 Resource Management Amendment Act 1997 (1997 No 104) by substituting the words ", 232, 234, 237(2), and 237C" for the words "to 234 and sections 236 to 237D". *See* section 78 of that Act as to the transitional provisions.

Subsection (1) was amended, as from 1 August 2003, by section 74 Resource Management Amendment Act 2003 (2003 No 23) by inserting the expression "233," after the expression "232,". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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.

Sections 229 to 237 were substituted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

Section 236 was amended, as from 17 December 1997, by section 45 Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "220(1)(aa)" for the expression "220(1)(ab)". *See* section 78 of that Act as to the transitional provisions.

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 District Land Registrar, 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) A District Land Registrar or a Registrar of Deeds shall not deposit the primary survey plan and (in respect of a subdivision by the Crown) the District Land Registrar 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.

Sections 229 to 237 were substituted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

237A Vesting of ownership of land in coastal marine area or bed of lake or river in the Crown or territorial authority

(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 as vesting in the Crown any part of the allotment that is in the coastal marine area.

(2) Any requirement to vest the bed under subsection (1)(a)(i) or subsection (1)(b) shall be subject to any rule in a district plan or any resource consent which provides otherwise.

Sections 237A to 237G were inserted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(b) was substituted, as from 25 November 2004, by section 27 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subsection (2) was amended, as from 10 August 2005, by section 93 Resource Management Amendment Act 2005 (2005 No 87) by substituting the expression "(1)(b)" for the expression "(1)(b)(i)". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 District Land Registrar.

(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 District Land Registrar 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.

Sections 237A to 237G were inserted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

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.

Sections 237A to 237G were inserted, as from 7 July 1993, by section 124 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 District Land Registrar.

Sections 237A to 237G were inserted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was amended, as from 10 August 2005, by section 94 Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "by the Minister of Conservation or the regional council, as the case may be,". *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 237A to 237G were inserted, as from 7 July 1993, by section 124 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.

Sections 237A to 237G were inserted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

237G Compensation for taking of land below mean high water springs or of bed of lake or river

Where—

(a) Land is vested in the Crown or a territorial authority in accordance with section 237A; and

(b) The land vested under section 237A adjoins, or would adjoin if it were not for an esplanade reserve, any allotment of 4 hectares or more created when land is subdivided,—

the Crown or territorial authority, as the case may be, shall pay compensation to the registered proprietor of that land, unless the registered proprietor agrees otherwise.

Sections 237A to 237G were inserted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

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 was inserted, as from 7 July 1993, by section 124 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was amended, as from 1 July 1998, by section 54(1) Ratings Valuations Act 1998 (1998 No 69) by substituting the words "a registered valuer agreed on by the parties (or, failing agreement, nominated by the President of the New Zealand Institute of Valuers)" for the words "the Valuer-General". See sections 55 to 63 for the savings and transitional provisions.

Subsections (2) and (3) were substituted, as from 1 July 1998, by section 54(1) Ratings Valuations Act 1998 (1998 No 69). *See* sections 55 to 63 for the savings and transitional provisions.

Vesting of roads and reserves

238 Vesting of roads

(1) When a District Land Registrar or Registrar of Deeds 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 was amended, as from 7 July 1993, by section 125 Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "all interests in land including any".

239 Vesting of reserves or other land

(1) When a District Land Registrar or a Registrar of Deeds 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 in the coastal marine area or any part of the bed of a river 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).

(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 shall, unless this Act provides otherwise,—

(a) In the case of land to which section 13 of the Foreshore and Seabed Act 2004 applies, be vested in the Crown subject to that section:

(b) In any other case, be vested under the Land Act 1948.

Subsection (1)(a) and (b) amended, as from 7 July 1993, by section 126(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "all interests in land, including any" and, in the case of para (b) only, the addition of the word "; and". Paragraph (c) was inserted by section 126(2) of the same amending Act.

Subsections (2) and (3) were inserted, as from 7 July 1993, by section 126(3) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was substituted, as from 25 November 1994, by section 4 Foreshore and Seabed Endowment Revesting Amendment Act 1994 (1994 No 113).

Subsection (3)(a) was amended, as from 25 November 2004, by section 28 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by substituting the words "section 13 of the Foreshore and Seabed Act 2004" for the words "section 9A of the Foreshore and Seabed Endowment Revesting Act 1991". *See* sections 40 to 43 of that Act.

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 District Land Registrar 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 of Deeds 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 District Land Registrar or Registrar of Deeds 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 District Land Registrar or the Registrar of Deeds must note the records accordingly.

Subsection (3) was amended, as from 17 December 1997, by section 46(1) Resource Management Amendment Act 1997 (1997 No 104) by substituting the words "be signed by the principal administrative officer or other authorised officer" for the words "have affixed to it the common seal". *See* section 78 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "chief executive" for the words "principal administrative officer". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Subsections (4) and (5) were inserted, as from 7 July 1993, by section 127 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (5)(b) was substituted, as from 17 December 1997, by section 46(2) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (5)(b) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "chief executive" for the words "principal administrative officer". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

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 District Land Registrar or the Registrar of Deeds 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 District Land Registrar 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 that Registrar.

(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 District Land Registrar 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 District Land Registrar or Registrar of Deeds 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 District Land Registrar or the Registrar of Deeds must note the records accordingly.

Subsection (2) was amended, as from 7 July 1993, by section 128(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or a similar condition under the corresponding provision of any previous enactment,".

Subsections (3) and (4) were inserted, as from 7 July 1993, by section 128(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (4)(b) was substituted, as from 17 December 1997, by section 47 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (4)(b) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "chief executive" for the words "principal administrative officer". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

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 one 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 District Land Registrar 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 District Land Registrar 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 District Land Registrar then receives notification pursuant to section 240(5) or section 241(4), the District Land Registrar shall note the memorandum accordingly.

Subsection (3) was inserted, as from 7 July 1993, by section 129 Resource Management Amendment Act 1993 (1993 No 65).

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 District Land Registrar or the Registrar of Deeds 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 District Land Registrar or the Registrar of Deeds 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 District Land Registrar or Registrar of Deeds 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 District Land Registrar or the Registrar of Deeds must note the records accordingly.

Section 243 was amended, as from 7 July 1993, by section 130(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or any certificate of title is issued".

Paragraph (a)(iii) was amended, as from 7 July 1993, by section 130(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "dominant or".

Paragraph (f) was substituted, as from 7 July 1993, by section 130(3) Resource Management Amendment Act 1993 (1993 No 65).

Paragraph (f)(ii) was substituted, as from 17 December 1997, by section 48 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Paragraph (f)(ii) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "chief executive" for the words "principal administrative officer". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Company leases and cross leases

244 Company leases and cross leases

[Repealed]

Section 244 was repealed, as from 1 July 1992, by section 92(1) 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 Survey Act 1986 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)

(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) The consent authority's approval of a plan of survey submitted to it under subsection (1) shall be given—

(a) Where the reclamation is a restricted coastal activity, by the Minister of Conservation—

(i) Signing the plan of survey (or a copy of it); and

(ii) Signing and dating a certificate stating that—

(A) The reclamation conforms with the coastal permit and the relevant provisions of the regional coastal plan; and

(B) In respect of any condition of the coastal permit or 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):

(b) Where the reclamation is not a restricted coastal activity, by—

(i) The regional council affixing its common seal to the plan of survey (or a copy of it); and

(ii) The chief executive of the regional council signing and dating a certificate stating that—

(A) The reclamation conforms with the resource consent and the relevant provisions of any regional plan; and

(B) 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 subsections (5)(a)(ii) or (5)(b)(ii), the consent authority shall forward a copy of that certificate to the relevant territorial authority.

Subsection (2)(b) was substituted, as from 7 July 1993, by section 131(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was repealed, as from 7 July 1993, by section 131(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsections (4)(c), (5)(a)(ii)(B) and (5)(b)(ii)(B) were amended, as from 17 December 1997, by section 49(a) Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "108(2)(b)" for the expression "108(1)(b)". They were further amended by s 49(b) of that Act by substituting the expression "108(2)(d)" for the expression "108(1)(c)". *See* section 78 of that Act as to the transitional provisions.

Subsection (5)(b)(ii) was amended, as from 1 July 2003, by section 262 Local Government Act 2002 (2002 No 84) by substituting the words "chief executive" for the words "principal administrative officer". *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

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 of Deeds 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 of Deeds 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 District Land Registrar or the Registrar of Deeds a copy of the certificate issued under section 245(5)(a)(ii) or (5)(b)(ii).

(3) On the deposit of a plan of survey under the Land Transfer Act 1952 or by the Registrar of Deeds, 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.

Subsection (3) was amended, as from 7 July 1993, by section 132 Resource Management Amendment Act 1993 (1993 No 65) by omitting the expression "(2)".

Part 11
Environment Court

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 was substituted, as from 2 September 1996, by section 6(1) 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.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Judges" were substituted, as from 2 September 1996, for the words "Planning Judges" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Commissioners" were substituted, as from 2 September 1996, for the words "Planning Commissioners" pursuant to section 6(2)(c) Resource Management Amendment Act 1996 (1996 No 160).

Environment Judges and alternate Environment Judges

The heading was amended, as from 2 September 1996, pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160) by substituting the words "Environment Judges" for the words "Planning Judges".

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.

The words "Environment Judge" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) 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 8 Environment Judge s shall hold office; and

(b) Any number of alternate Environment Judge s 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.

The words "Environment Judge" in subsections (1) to (3) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1) was amended, as from 20 May 2004, by section 3(1) Resource Management Amendment Act 2004 (2004 No 46), by substituting the words "Attorney-General" for the words "Minister of Justice".

Subsection (3)(a) was amended, as from 2 September 1996, by section 7 Resource Management Amendment Act 1996 (1996 No 160) by substituting the expression "8" for the expression "5".

Subsection (4) was inserted, as from 20 May 2004, by section 3(2) 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 Environment 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 Environment Court's jurisdiction in particular matters or classes of matters and in particular places and areas.

The words "Environment Judge" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1) was amended, as from 20 May 2004, by section 4 Resource Management Amendment Act 2004 (2004 No 46), by substituting the words "Attorney-General" for the words "Minister of Justice".

The words "Environment Court" in subsection (2) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) 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 was inserted, as from 10 August 2005, by section 95 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

The words "Environment Judge" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Environment Commissioners and Deputy Environment Commissioners

The words "Environment Commissioners" and "Deputy Environment Commissioners" were substituted, as from 2 September 1996, for the words "Planning Commissioners" and "Deputy Planning Commissioners" pursuant to section 6(2)(c) 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 Minister of Justice 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.

Paragraph (da) was inserted, as from 2 September 1996, by section 8 Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The word "Court" was substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Commissioner" and "Deputy Environment Commissioner" were substituted, as from 2 September 1996, for the words "Planning Commissioner" and "Deputy Planning Commissioner" pursuant to section 6(2)(c) 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, notwith-

standing that the term for which he or she was appointed may have expired.

Subsection (1) was amended, as from 20 May 2004, by section 5 Resource Management Amendment Act 2004 (2004 No 46) by substituting the words "Attorney-General" for the words "Minister of Justice".

Subsection (3) was substituted, as from 2 September 1996, by section 9 Resource Management Amendment Act 1996 (1996 No 160).

Subsection (4) was inserted, as from 2 September 1996, by section 9 Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Commissioner" and "Deputy Environment Commissioner" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Commissioner" and "Deputy Planning Commissioner" pursuant to section 6(2)(c) 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.

In section 255 the words "Environment Commissioner" and "Deputy Environment Commissioner" were substituted, as from 2 September 1996, for the words "Planning Commissioner" and "Deputy Planning Commissioner" pursuant to section 6(2)(c) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1)(a) was amended, as from 2 September 1996, by section 10 Resource Management Amendment Act 1996 (1996 No 160) by substituting the word "or" for the word "and".

The words "Environment Judge" in subsection (1)(b) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

The words "Environment Commissioner" and "Deputy Environment Commissioner" were substituted, as from 2 September 1996, for the words "Planning Commissioner" and "Deputy Planning Commissioner" pursuant to section 6(2)(c) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

The words "Environment Judge" in section 257 were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Commissioner" and "Deputy Environment Commissioner" in section 257 were substituted, as from 2 September 1996, for the words "Planning Commissioner" and "Deputy Planning Commissioner" pursuant to section 6(2)(c) Resource Management Amendment Act 1996 (1996 No 160).

Section 257 was amended, as from 20 May 2004, by section 6 Resource Management Amendment Act 2004 (2004 No 46), by substituting the words "Attorney-General" for the words "Minister of Justice".

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.

The words "Environment Judge" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Commissioner" and "Deputy Environment Commissioner" were substituted, as from 2 September 1996, for the words "Planning Commissioner" and "Deputy Planning Commissioner" pursuant to section 6(2)(c) 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 Environment Court but may sit with it and assist it in any way the Environment Court determines.

The words "Environment Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (2) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Officers of Environment Court

The words "Environment Court" were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) 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 Environment Court shall—

(a) Be appointed under the State Sector Act 1988; and

(b) Be officers of the Environment 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 Environment Court may also hold another office or employment in the Public Service.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1)(aa) was inserted, as from 10 August 2005, by section 96(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

The words "Environment Court" in subsection (2) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2) was amended, as from 10 August 2005, by section 96(2) Resource Management Amendment Act 2005 (2005 No 87) by inserting the words ", a Deputy Registrar," after the word "Registrar". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2A) was inserted, as from 10 August 2005, by section 96(3) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

The words "Environment Court" in subsection (3) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Miscellaneous provisions relating to Environment Court

The words "Environment Court" in this heading were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) 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.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2) was inserted as from 20 May 2004, by section 7 Resource Management Amendment Act 2004 (2004 No 46).

Subsection (3) was inserted, as from 10 August 2005, by section 97 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 Environment Court solely on the ground that the member is a ratepayer.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court", where they secondly appear, were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) 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 Environment 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.

The words "Environment Commissioner" and "Deputy Environment Commissioner" were substituted, as from 2 September 1996, for the words "Planning Commissioner" and "Deputy Planning Commissioner" pursuant to section 6(2)(c) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in paragraph (a) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

264 Annual report of Registrar

(1) The Registrar shall no later than the 31st day of August in each year, deliver to the Minister of the Crown who is responsible for the Department for Courts a report stating such information

relating to the administration, workload, and resources of the Environment Court during the year ending on the preceding 30th day of June as the Minister of the Crown who is responsible for the Department for Courts may require.

(2) The Minister of the Crown who is responsible for the Department for Courts shall lay before the House of Representatives each report received by him or her under this section within 10 sitting days of receiving it.

Subsections (1) and (2) were amended, as from 1 July 1995, by section 10(1) Department of Justice (Restructuring) Act 1995 (1995 No 39) by substituting the words "Minister of the Crown who is responsible for the Department for Courts" for the words "Minister of Justice".

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Constitution of Environment Court

The words "Environment Court" were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

265 Environment Court sittings

(1) The quorum for the Environment Court is—

(a) One Environment Judge and one Environment Commissioner sitting together; or

(b) One Environment Judge sitting alone for the purposes of section 279 or proceedings under Part 12; or

(c) One 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 Environment Court but, if there is no majority, the decision of the presiding member is the decision of the Environment Court.

Subsection (1)(b) was amended, as from 7 July 1993, by section 133 Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "279" for the expression "278".

The words "Environment Judge" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsections (1) and (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" where they secondly appear in subsection (3) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) 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 Environment Court to decide whether the Environment Court has been properly constituted and convened.

(2) The exercise of discretion under subsection (1) may not be questioned in proceedings before the Environment Court or in another Court.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsections (1) (where they secondly appear) and (2) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) 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 Environment Court.

(2) Any party may request an Environment Judge to convene a conference under subsection (1).

(3) The member of the Environment 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 Environment 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 Environment 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 con-

duct 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.

The words "Environment Judge" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) 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 Environment Court are satisfied that it is appropriate for him or her to do so.

The heading to section 268 was amended, as from 10 August 2005, by section 98 Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "**Alternative**" for the word "**Additional**". *See* sections 131 to 135 of that Act as to the transitional provisions.

The words "Environment Court" in subsection (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (2)(b) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Procedure and powers

269 Environment 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.

The words "Environment Court" in subsections (1) to (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 Environment 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.

The words "Environment Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court's" in subsection (1) were substituted, as from 2 September 1996, for the word "Tribunal's" pursuant to section 6(2)(a) 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 Environment Court considers convenient unless the parties otherwise agree.

The words "Environment Court" (where they first appear) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" (where they secondly appear) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

271A Submitter may be party to proceedings

[Repealed]

Section 271A was inserted, as from 2 September 1996, by section 11 Resource Management Amendment Act 1996 (1996 No 160).

Section 271A was repealed, as from 1 August 2003, by section 75 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 Environment 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 Environment Court fails without sufficient cause to appear before the Environment Court at the time and place fixed for the hearing, the Environment Court may dismiss the proceedings.

The words "Environment Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (4) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) 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.

Subsection (1) was amended, as from 2 September 1996, by section 12 Resource Management Amendment Act 1996 (1996 No 160) by omitting the words "in title".

The words "Environment Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2) was amended, as from 2 September 1996, by section 12 Resource Management Amendment Act 1996 (1996 No 160) by omitting the words "in title".

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) a person who has an interest in the proceedings that is greater than the public generally:
- (d) a person representing a relevant aspect of the public interest:
- (e) a person who made a submission in the previous proceedings on the same matter.

(2) A person described in subsection (1) may become a party to the proceedings by giving notice to the Environment Court and to all parties within 30 working days after the notice of appeal or notice of inquiry is lodged, or other proceedings are commenced.

(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 relief sought 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), evidence may only be called 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 public generally, 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.

Subsection (1) was amended, as from 2 September 1996, by section 13 Resource Management Amendment Act 1996 (1996 No 160) by inserting the words "any person representing some relevant aspect of the public interest,".

The words "Environment Court" in the original subsection (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" and "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (3) was inserted, as from 1 October 1998, by section 225 Ngai Tahu Claims Settlement Act 1998 (1998 No 97). *See* clause 2 Ngai Tahu Claims Settlement Act Commencement Order 1998 (SR 1998/295).

Section 274 was substituted, as from 1 August 2003, by section 76 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4) was substituted, as from 10 August 2005, by section 99 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsections (4A) and (4B) were inserted, as from 10 August 2005, by section 99 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

The words "Environment Court" in subsections (1) to (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1A) was inserted, as from 10 August 2005, by section 100 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 was inserted, as from 1 August 2003, by section 77 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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.

The words "Environment Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

Subsection (1) was substituted, as from 2 September 1996, by section 14 Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1) was amended, as from 10 August 2005, by section 101(1) Resource Management Amendment Act 2005 (2005 No 87) by adding the words ", 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". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1A) was inserted, as from 10 August 2005, by section 101(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

The words "Environment Judge" in subsections (2) and (3) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (3) (where they secondly appear) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (3) was substituted, as from 10 August 2005, by section 101(3) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsections (4) and (5) were inserted, as from 10 August 2005, by section 101(3) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

279 Powers of an 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 one Environment Judge and one 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.

The words "Environment Judge" were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1)(fa) was inserted, as from 7 July 1993. by section 134 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsection (3) and (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Commissioner" were substituted, as from 2 September 1996, for the words "Planning Commissioner" pursuant to section 6(2)(c) 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.

Subsection (1) was amended, as from 2 September 1996, by section 15(1) Resource Management Amendment Act 1996 (1996 No 160) by omitting the words "(not including the power to hear and determine proceedings)".

The words "Environment Judge" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1) was substituted, as from 10 August 2005, by section 102 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1A) was inserted, as from 2 September 1996, by section 15(2) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1A) was repealed, as from 1 August 2003, by section 78 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsections (1A) and (1B) were inserted, as from 10 August 2005, by section 102 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 2 September 1996, by section 15(1) Resource Management Amendment Act 1996 (1996 No 160) by inserting the words "to an Environment Judge".

The words "Environment Court" in subsections (2), (3) and (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Judge" in subsection (3) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) 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 Environment 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.

The words "Environment Court" in subsections (1) to (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1)(a)(ii) was substituted, as from 1 August 2003, by section 79 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(a)(iia) was inserted, as from 1 August 2003, by section 79 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (5) was inserted, as from 10 August 2005, by section 103 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 281A and 281B were inserted, as from 10 August 2005, by section 104 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Sections 281A and 281B were inserted, as from 10 August 2005, by section 104 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

282 Power to commit for contempt

(1) If any person—

(a) Wilfully insults, assaults, threatens, or intimidates the Environment Court or any member of it or any special advisor to or officer of the Environment Court, during a sitting of the Environment Court, or in going to or returning from any sitting; or

(b) Wilfully interrupts the proceedings of the Environment Court or otherwise misbehaves while the Environment Court is sitting; or

(c) Wilfully and without lawful excuse disobeys an order or direction of a member of the Environment Court in the course of any proceedings before the Environment Court—

any officer of the Environment Court, with or without the assistance of any member of the Police or other person, may, in accordance with an order given by a member of the Environment 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 Environment 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.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Judge" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) 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 Environment Court; or

(c) Refuse to answer any questions put by a member of the Environment Court during proceedings before the Environment 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.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 Environment Court, the Environment 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.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

284A Security for costs

(1) The Environment Court does not have the power to order a party to give security for costs.

(2) Subsection (1) overrides any other enactment relating to security for costs.

Section 284A was inserted, as from 1 August 2003, by section 80 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

285 Awarding costs

(1) The Environment Court may order any party to pay—

(a) To any other party, such costs and expenses (including witness expenses) incurred by that other party as the Environment Court considers reasonable:

(b) To the Crown, all or any part of the Environment Court's costs and expenses.

(2) If any party fails to proceed with a hearing at the time arranged for it by the Environment Court, or to give adequate notice of abandonment of proceedings, the Environment Court may order the party in default to pay—

(a) To the Crown; or

(b) To another party—

any of the costs and expenses incurred by the Crown or the other party.

Section 285 was substituted, as from 7 July 1993, by section 135 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (2) (where they secondly appear) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

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.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 point 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 Environment 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.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Judge" in subsection (2) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2) was amended, as from 10 August 2005, by section 105(1) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "at the appropriate registry of the High Court" for the words "of the High Court at Wellington". *See* sections 131 to 135 of that Act as to the transitional provisions.

The words "Environment Judge" in subsection (3) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (3) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (4) was amended, as from 10 August 2005, by section 105(2) Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "at the appropriate registry of the High Court" for the words "of the High Court at Wellington". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (5) was repealed, as from 7 July 1993, by section 136 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (5) was inserted, as from 10 August 2005, by section 105(3) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Appeals, inquiries, and other proceedings before Environment Court

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

289 Reply to appeal or request for inquiry

Where notice of an appeal or inquiry is given, the person whose decision is appealed against, or is the subject of the inquiry, shall—

(a) Within 20 working days after being served with the notice of the appeal or inquiry or such further time as an Environment Judge may allow, lodge with the Environment Court a written reply in the prescribed form to the matters raised in the notice, and serve a copy of the re-

ply on the person who gave the notice, and, where the applicant is not the appellant, on the applicant; and

(b) Within 30 working days after being served with the notice of the appeal or inquiry or such further time as an Environment Judge may allow, serve a copy of the reply on every other party to the proceedings who has advised the Registrar, in accordance with section 274, that they wish to be a party.

Section 289 was substituted, as from 2 September 1996, by section 16 Resource Management Amendment Act 1996 (1996 No 160).

Paragraph (b) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "274" for the expression "271A". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

290 Powers of Environment 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.

The words "Environment Court" in subsections (1) to (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

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 was inserted, as from 10 August 2005, by section 106 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

291 Other proceedings before Environment 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.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Judge" in subsection (3) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

Environment Court's powers in regard to plans and policy statements

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 further formality.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

293 Environment Court may order change to policy statements and plans

(1) After hearing an appeal against, or an inquiry into, the provisions of any policy statement or plan that is before the Environment Court, the Court may direct the local authority to—

(a) prepare changes to the 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 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 policy statement or plan.

(5) In subsections (3) and (4), **departs** and **departure** mean that a 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.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsections (2) to (4) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (4) was substituted, as from 1 August 2003, by section 81 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsections (5) and (6) were inserted, as from 1 August 2003, by section 81 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Section 293 was substituted, as from 10 August 2005, by section 107 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

293A Determinations relating to customary rights orders made under Foreshore and Seabed Act 2004

(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 was inserted, as from 17 January 2005, by section 29 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

294 Review of decision by Environment 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 Environment 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 Environment Court on any of those grounds for a rehearing of the proceedings; and in any such case the Environment 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 Environment Court on any such proceedings shall have the same effect as a decision of the Environment Court on the original proceedings.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsections (1) (where they secondly appear) to (3) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Decisions of Environment Court

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 Environment 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 Environment Court has made a decision.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" (where they secondly appear) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

297 Decisions of Environment Court to be in writing

Every decision, determination, or order of the Environment Court, unless it is pronounced orally at a sitting of the Environment Court, and every report, recommendation, or determination made by the Environment 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 Environment Court.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" and "Tribunal" pursuant to section 6(2)(a) 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 Environment Court has been affixed shall be judicially noticed.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" and "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Appeals from Environment Court decisions

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 point 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.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal"" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (1) (where they secondly appear) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2) was repealed, as from 7 July 1993, by section 137 Resource Management Amendment Act 1993 (1993 No 65).

Section 299 was substituted, as from 1 January 2004, by section 48(1) Supreme Court Act 2003 (2003 No 53). *See* sections 50 to 55 of that Act for the transitional and savings provisions.

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.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2) was amended, as from 10 August 2005, by section 109(1) Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "at Wellington". *See* sections 131 to 135 of that Act as to the transitional provisions.

The words "Environment Court" in subsection (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (5)(d) was amended, as from 2 September 1996, by section 17(a) Resource Management Amendment Act 1996 (1996 No 160) by inserting the word "; and".

Subsection (5)(e) was inserted, as from 2 September 1996, by section 17(b) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (6) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (6) was amended, as from 10 August 2005, by section 109(2) Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "at Wellington". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 Environment Court; and

(d) When the decision or report and recommendation was made by the Environment 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.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (1) (where they secondly appear) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1)(b) was amended, as from 10 August 2005, by section 110 Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "at Wellington". *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Subsection (2)(a) was amended, as from 10 August 2005, by section 111 Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "at Wellington". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 Environment Court:

(b) A report recording, in respect of any matter or issue the Court may specify, any of the findings of fact of the

Environment 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 Environment 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 point of law so requires; and the order may be made subject to such conditions as the High Court thinks fit.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (1) (where they secondly appear) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1) was amended, as from 10 August 2005, by section 112 Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "at Wellington". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 points 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 points 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.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1) was amended, as from 10 August 2005, by section 113 Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "at Wellington". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 was amended, as from 10 August 2005, by section 114 Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "at Wellington". *See* sections 131 to 135 of that Act as to the transitional provisions.

308 Appeals to the Court of Appeal

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.

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 recognised customary activity carried out in accordance with section 17A(2).

(5) However, sections 310 to 313 and sections 330 to 337 apply to the exercise of a recognised customary activity.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Judge" in subsections (1) to (3) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

Subsections (4) and (5) were inserted, as from 17 January 2005, by section 30 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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.

(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 towards 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).

(ga)

(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 93 to 94C have been, or will be contravened.

Paragraph (b) was substituted, as from 1 August 2003, by section 82(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraph (b) was substituted, as from 10 August 2005, by section 115(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Paragraphs (ba) and (bb) were inserted, as from 10 August 2005, by section 115(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Paragraph (c) was amended, as from 1 August 2003, by section 82(2) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words ", regulations made under this Act," after the word "Act". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraph (d) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "20A" for the expression "20". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraph (e) was amended, as from 7 July 1993, by section 138(1) Resource Management Amendment Act 1993 (1993 No 65) by adding the word "; or".

Paragraphs (f) and (g) were inserted, as from 7 July 1993, by section 138(2) Resource Management Amendment Act 1993 (1993 No 65).

Paragraph (h) was inserted, as from 1 August 2003, by section 82(3) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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).

The words "Environment Court" in subsections (1) to (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (3) was amended, as from 7 July 1993, by section 139 Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "of Conservation".

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 Environment Court.

Subsection (1) was amended, as from 7 July 1993, by section 140 Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "on the Minister and".

Subsection (1) was amended, as from 10 August 2005, by section 116(1) Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "on the Minister and". *See* sections 131 to 135 of that Act as to the transitional provisions.

The words "Environment Court" in subsection (2) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) 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 Environment 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.

The words "Environment Court" were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Section 313 was amended, as from 17 December 1997, by section 50 Resource Management Amendment Act 1997 (1997 No 104) by inserting the words ", and any other person who has the right to be represented at proceedings under section 274,". *See* section 78 of that Act as to the transitional provisions.

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 one 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 Environment 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 Environment 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 Environment 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 Environment 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 Environment Court determines that any one or more of the requirements of Schedule 1 have not been observed in respect of a policy statement or a plan, do any one 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 Environment Court so states, apply to the personal representatives, successors, and assigns of a person to the same extent as it applies to that person.

Subsections (1)(a)(i) was amended, as from 7 July 1993, by section 141(1) and (2) respectively by inserting the words "a rule in a proposed plan,".

Subsection (1)(a)(i) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "20A" for the expression "20". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsections (1)(b)(i) was amended, as from 7 July 1993, by section 141(1) and (2) respectively by inserting the words "a rule in a proposed plan,".

Subsection (1)(d) was amended, as from 7 July 1993, by section 141(3) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "actual and" for the words "actual or", by substituting the words "on the environment, where the person against whom the order is sought" for the words "caused by or on behalf of the person against whom the order is sought, where that person", and by inserting in subparagraph (iii) the words "or a proposed plan".

Subsection (1)(da) was inserted, as from 7 July 1993, by section 141(4) Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsections (1) (where they first appear) and (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsections (1) and (5) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2) was substituted, as from 7 July 1993, by section 141(5) Resource Management Amendment Act 1993 (1993 No 65).

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.

Subsection (1) was substituted, as from 7 July 1993, by section 142 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsection (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

The words "Environment Court" in subsections (1), (2) and (5) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2) was amended, as from 7 July 1993, by section 143 Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "paragraph (da) or".

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.

The words "Environment Court" in subsection (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

The words "Environment Court" were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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).

The words "Environment Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2) was amended, as from 7 July 1993, by section 144 Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "(b)(ii), (c), (d)(iv), or (da)" for the expression "or (b)(ii)".

Subsection (2) was substituted, as from 1 August 2003, by section 83 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was inserted, as from 1 August 2003, by section 83 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 was substituted, as from 7 July 1993, by section 145 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Judge" in section 320 were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (6) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 Envir-

onment 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.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

Subsection (1)(b) was substituted, as from 7 July 1993, by section 146(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(c)(ii) was amended, as from 7 July 1993, by section 146(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the word "within" for the word "covering".

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.

Paragraph (d) was substituted, as from 17 December 1997, by section 51(1) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Paragraph (f) was amended, as from 17 December 1997, by section 51(2) Resource Management Amendment Act 1997 (1997 No 104) by omitting the words "and the last day on which a notice of appeal can be lodged". *See* section 78 of that Act as to the transitional provisions.

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 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) Section 289 (reply to appeal) does not apply in respect of any appeal lodged under this section.

(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.

The words "Environment Court" in subsections (1), (2) and (5) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court", in subsection (2), were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2)(c) was amended, as from 17 December 1997, by section 52(1) Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "15 working" for the expression "7". *See* section 78 of that Act as to the transitional provisions.

Subsection (3) was substituted, and subsections (3A) to (3H) were inserted, as from 17 December 1997, by section 52(2) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (5) was inserted, as from 7 July 1993, by section 147 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (5) was substituted, as from 1 August 2003, by section 84 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (6) was inserted, as from 1 August 2003, by section 84 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 was inserted, as from 7 July 1993, by section 148 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsection (7) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (7) was amended, as from 10 August 2005, by section 118 Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "; but nothing in section 325(3) shall apply in relation to a notice of appeal lodged under section 325(2) (as applied by this subsection)". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 reasonable 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 was inserted, as from 20 August 1998, by section 17 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Paragraph (1)(a) was amended, as from 1 July 2005, by section 11(3) Maritime Transport Amendment Act 2004 (2004 No 98) by substituting the words "Maritime New Zealand" for the words "Maritime Safety".

Subsection (2) was amended, as from 1 July 2005, by section 11(3) Maritime Transport Amendment Act 2004 (2004 No 98) by substituting the words "Maritime New Zealand" for the words "Maritime Safety".

Subsection (3) was substituted, as from 17 December 1997, by section 53 Resource Management Amendment Act 1997 (1997 No 104).

The words "Environment Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

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.

Subsection (1)(b) was amended, as from 1 March 1999, by section 215(1) Land Transport Act 1998 (1998 No 110) by substituting the words "the Land Transport Act 1998" for the words "the Transport Act 1962".

Subsection (1)(c) was substituted, as from 17 December 1997, by section 54 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (2) was substituted, as from 1 August 2003, by section 85 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2)(a) was amended, as from 10 August 2005, by section 119 Resource Management Amendment Act 2005 (2005 No 87) by substituting the words "a national environmental standard" for the words "regulations made under section 43". *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Subsection (4) was substituted, and subsections (5), (6), and (7) were inserted, as from 7 July 1993, by section 149 Resource Management Amendment Act 1993 (1993 No 65).

Subsections (4) and (5) were substituted, as from 17 December 1997, by section 55 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

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 one 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 dwellinghouse 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.

Subsection (1)(c) was amended, as from 7 July 1993, by section 150(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or network utility operation". Subsection (1)(f) was amended, as from 7 July 1993, by section 150(2) of the same amending Act by substituting the word "event" for the word "emergency".

Subsection (1A) was inserted, as from 10 August 2005, by section 120(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2A) was inserted, as from 10 August 2005, by section 120(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (4) was inserted, as from 20 August 1998, by section 18 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

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 was inserted, as from 7 July 1993, by section 151 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was amended, as from 10 August 2005, by section 121(1)(a) Resource Management Amendment Act 2005 (2005 No 87) by substituting the expression "330" for the expression "330(1)". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1) was amended, as from 10 August 2005, by section 121(1)(b) Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "(other than the occupier)" after the word "person". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 10 August 2005, by section 121(2)(a) Resource Management Amendment Act 2005 (2005 No 87) by substituting the expression "330" for the expression "330(1)". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was amended, as from 10 August 2005, by section 121(2)(b) Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "(other than the occupier)" after the word "person". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 of this Act 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 of this Act 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) of this Act by acting in accordance with this section.

Section 330B was inserted, as from 1 December 2002, by section 117 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.

Subsection (1) was amended, as from 7 July 1993, by section 152(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the word "require" for the words "seek an enforcement order under section 314(1)(d) for" and by substituting the words "actual and reasonable costs (as defined in section 314(2))" for the words "actual or reasonable costs".

Subsection (1A) was inserted by section 152(2) 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 sec-

tion 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(2), or 15(2); or

(d) any control imposed under Schedule 12 on a recognised customary activity is being complied with.

(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.

Subsection (1)(a) was amended, as from 7 July 1993, by section 153(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or section 10A (certain existing activities allowed),".

Subsection (1)(a) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "20A" for the expression "20". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(c) was amended, as from 17 January 2005, by section 31 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by inserting the expression "; or". *See* sections 40 to 43 of that Act.

Subsection (1)(d) was inserted, as from 17 January 2005, by section 31 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subsection (2) was amended, as from 7 July 1993, by section 153(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "organic matter" for the word "vegetation".

Subsection (2A) was inserted, as from 7 July 1993, by section 153(3) 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) Subsection (1) applies for the purpose of assessing the effects on the environment of a recognised customary activity.

(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.

Subsection (1A) was inserted, as from 17 January 2005, by section 32 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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 one 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.

Subsection (1) was amended, as from 30 June 1998, by section 7 District Courts Amendment Act 1998 (1998 No 76), by inserting the words "or any Community Magistrate".

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).

Subsection (2)(c) was amended, as from 7 July 1993, by section 154 Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "section 334" for the words "this section".

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 police officer 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 police officer 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 police officer 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.

The words "Environment Court" in subsections (3), (4) and (5) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

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) of this section 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.

The words "Environment Court" in subsections (2) and (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (3)(c) was inserted, as from 7 July 1993, by section 155 Resource Management Amendment Act 1993 (1993 No 65).

Subsections (1A) and (1B) were inserted, as from 20 August 1998, by section 19 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

339 Penalties

(1) Every person who commits an offence against section 338(1) or (1A) or (1B) is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding $200,000, and, if the offence is a continuing one, to a further 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) Where 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 any or all of the orders specified in section 314.

(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.

Subsection (1) was amended, as from 17 December 1997, by section 56 Resource Management Amendment Act 1997 (1997 No 104) by omitting the word "summary". *See* section 78 of that Act as to the transitional provisions.

Subsection (1) was amended, as from 20 August 1998, by section 20 Resource Management Amendment Act 1994 (1994 No 105) by inserting the expression "or (1A) or (1B)". *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (4) was substituted, as from 30 June 2002, by section 186 Sentencing Act 2002 (2002 No 9). *See* sections 148 to 160 of that Act for the transitional and savings provisions. *See* clause 2 Sentencing Act Commencement Order 2002 (SR 2002/176).

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.

Sections 339A to 339C were inserted, as from 20 August 1998, by section 21 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

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.

Sections 339A to 339C were inserted, as from 20 August 1998, by section 21 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

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.

Sections 339A to 339C were inserted, as from 20 August 1998, by section 21 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

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) Notwithstanding anything in subsection (1), where any proceedings are brought by virtue of that subsection, it shall be a good defence if the defendant proves—

(a) In the case of a natural person (including a partner in a firm) that—

(i) He or she did not know nor could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) He or she took all reasonable steps to prevent the commission of the offence:

(b) In the case of a body corporate that—

(i) Neither the directors nor any person concerned in the management of the body corporate knew or could reasonably be expected to have known that the offence was to be or was being committed; or

(ii) The body corporate took all reasonable steps to prevent the commission of the offence; and

(c) In all cases, that the defendant took all reasonable steps to remedy any effects of the act or omission giving rise to the offence.

(3) Where any body corporate is convicted of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of the like offence if it is proved—

(a) That the act 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.

Subsection (1) was substituted, as from 20 August 1998, by section 22 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (2)(b)(i) was amended, as from 17 December 1997, by section 57(2) Resource Management Amendment Act 1997 (1997 No 104) by substituting the word "concerned" for the word "involved". *See* section 78 of that Act as to the transitional provisions.

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).

Subsection (2)(b) was amended, as from 7 July 1993, by section 156 Resource Management Amendment Act 1993 (1993 No 65) by omitting the word "either".

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.

Sections 341A and 341B were inserted, as from 20 August 1998, by section 23 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

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.

Sections 341A and 341B were inserted, as from 20 August 1998, by section 23 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

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 percent thereof, and this sum shall be credited to the 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).

343 Discharges from ships

[Repealed]

Section 343 was repealed, as from 20 August 1998, by section 24 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource

Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Infringement offences

This heading was inserted, as from 2 September 1996, by section 18 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).

Sections 343A to 343D were inserted, as from 2 September 1996, by section 18 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.

Sections 343A to 343D were inserted, as from 2 September 1996, by section 18 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.

Sections 343A to 343D were inserted, as from 2 September 1996, by section 18 Resource Management Amendment Act 1996 (1996 No 160).

Subsection (4) was substituted, as from 9 October 2006, by section 36(1) 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.

Sections 343A to 343D were inserted, as from 2 September 1996, by section 18 Resource Management Amendment Act 1996 (1996 No 160).

Part 13
Hazards Control Commission

[Repealed]

Part 13 (sections 344 to 351) was repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

344 Interpretation

[Repealed]

Part 13 (sections 344 to 351) was repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

345 Purpose and principles

[Repealed]

Part 13 (sections 344 to 351) was repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

346 Establishment of Commission

[Repealed]

Part 13 (sections 344 to 351) was repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

347 Functions of Commission

[Repealed]

Part 13 (sections 344 to 351) was repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

348 Membership of Commission

[Repealed]

Part 13 (sections 344 to 351) was repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

349 Compliance with policy directions

[Repealed]

Part 13 (sections 344 to 351) was repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

350 Further provisions applying in respect of Commission

[Repealed]

Part 13 (sections 344 to 351) was repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

351 Regulations

[Repealed]

Part 13 (sections 344 to 351) was repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

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, including by facsimile; 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) Where the person has specified as an address for service a Post Office box address, a document exchange box number, or a facsimile number,—

(i) By posting the document to that Post Office box address; or

(ii) By leaving the document at a document exchange for direction to the document exchange box number; or

(iii) By transmitting the document to that facsimile number; or

(d) By serving it in such other manner as the Environment Court may, on application made to it, direct.

(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.

(5) Where a notice or other document is sent by post to a person in accordance with subsection (1)(c) or (ca), 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.

Subsection (1)(ca) was inserted, as from 7 July 1993, by section 157(1) Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsection (1)(d) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (5) was amended, as from 7 July 1993, by section 157(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the expression "or (ca)".

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 was inserted, as from 20 August 1998, by section 25 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subsection (1) was substituted, as from 10 August 2005, by section 122(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (1A) was inserted, as from 10 August 2005, by section 122(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Section 7 District Courts Amendment Act 1998 (1998 No 76) proposed to amend subsection (2), as from 30 June 1998, by inserting the words "or Community Magistrate".

Subsection (2) was amended, as from 10 August 2005, by section 122(2) Resource Management Amendment Act 2005 (2005 No 87) by inserting the word "However," before the words "A District Court". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (4) was substituted, as from 10 August 2005, by section 122(3) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

353 Notices and consents in relation to Maori land

Part 10 of the Maori Land 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 was substituted, as from 7 July 1993, by section 158 Resource Management Amendment Act 1993 (1993 No 65).

354 Crown's existing rights to resources to continue

(1) Without limiting the Acts Interpretation Act 1924 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 land and any related part of the coastal marine area in which the Crown has a right, interest, or title, without obtaining the consent of the Crown under the Land Act 1948 or the Foreshore and Seabed Endowment Revesting Act 1991 or the Foreshore and Seabed Act 2004, if the use or occupation by that person does not contravene this Act or regulations.

Subsection (2) was substituted and subsection (3) was inserted, as from 7 July 1993, by section 159 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was amended, as from 25 November 1994, by section 4 Foreshore and Seabed Endowment Revesting Amendment Act 1994 (1994 No 113), by inserting the words "or the Foreshore and Seabed Endowment Revesting Act 1991".

Subsection (3) was amended, as from 25 November 2004, by section 33 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by inserting the words "or the Foreshore and Seabed Act 2004" after the expression "1991". *See* sections 40 to 43 of that Act.

355 Vesting of reclaimed land

(1) Any person or local authority may apply to the Minister of Conservation for any right, title, or interest in any land in the coastal marine area which is land of the Crown and which has been reclaimed or is proposed to be reclaimed to be vested in that person.

(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) Without limiting section 355AA, the relevant Minister 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 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 District Land Registrar, with a request that a certificate of title be issued accordingly; and

(d) Shall be registered, without fee, by the District Land Registrar as soon as practicable after receipt from the Minister.

(5) The District Land Registrar 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 in the coastal marine area, or land which forms part of a riverbed or lakebed, include land which was in that area or part of that bed before it was reclaimed.

Subsection (3) was amended, as from 25 November 2004, by section 34(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by substituting the words "Without limiting section 355AA, the" for the word "The". *See* sections 40 to 43 of that Act.

Subsection (4)(ab) was inserted, as from 25 November 2004, by section 34(2) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subsection (6) was inserted, as from 7 July 1993, by section 160 Resource Management Amendment Act 1993 (1993 No 65).

355AA Effect of Foreshore and Seabed Act 2004 on vesting of reclamations

(1) If an application is made under section 355(1) that relates to land reclaimed from the public foreshore and seabed, the Minister of Conservation may vest in the applicant a right, title, or interest in the relevant land under section 355(3).

(2) However, subsection (1) applies only if, before the commencement of section 13(1) of the Foreshore and Seabed Act 2004,—

(a) a coastal permit has been granted to carry out the reclamation; or

(b) the Minister of Conservation has entered into a written agreement with the applicant to vest a right, title, or interest in the relevant land; or

(c) an enactment has provided for a right, title, or interest in the relevant land to be vested in the applicant.

(3) If subsection (1) does not apply, the Minister of Conservation—

(a) must not vest an estate in fee simple in the relevant land; but

(b) may vest in the applicant a lesser right, title, or interest in the reclaimed land.

(4) Subsection (3)(b) applies,—

(a) in the case of a port company or port operator referred to in section 107B(2)(e),—

(i) for a leasehold interest granted to it, so long as that interest does not exceed 50 years (though it may include a perpetual right of renewal on the same terms as the original lease, to the extent that the land continues to be used for port facilities):

(ii) for any other interest granted to it, so long as that interest, together with any rights of renewal, does not exceed 50 years; and

(b) in the case of any other entity, so long as the interest granted to it, together with any rights of renewal, does not exceed 50 years.

(5) In vesting an interest in reclaimed land under subsection (4), the Minister of Conservation may impose encumbrances or restrictions on the right, title, or interest in order to—

(a) control the use to which the land may be put:

(b) protect access rights in the coastal marine area, subject to any limits imposed by or under any enactment.

Sections 355AA and 355AB were inserted, as from 25 November 2004, by section 35 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

355AB Application for renewals

(1) The holder of a right, title, or interest granted under section 355AA(3)(b)—

(a) may apply to the Minister of Conservation, not later than 3 months before the expiry of the existing right, title, or interest, for a renewal of the right, title, or interest in the same, or part of the same, relevant land; and

(b) has the right to have the application considered and determined before any other application may be considered for a right, title, or interest in the same land.

(2) If an application is made under subsection (1), the holder may continue to operate under the existing right, title, or interest until the application is determined.

Sections 355AA and 355AB were inserted, as from 25 November 2004, by section 35 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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).

Sections 355A and 355B were inserted, as from 17 December 1997, by section 58 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

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.

Sections 355A and 355B were inserted, as from 17 December 1997, by section 58 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

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 Environment 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 Environment 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)

The words "Environment Court" in subsections (1), and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2)(b) was amended, as from 10 August 2005, by section 123 Resource Management Amendment Act 2005 (2005 No 87) by substituting the expression "section 141C" for the words "section 140 (which relates to call-in)". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (3) was amended, as from 1 August 2003, by section 86(1) Resource Management Amendment Act 2003 (2003 No 23) by omitting the words "or make any reference to the Court under clause 14 of Schedule 1,".

Subsection (6) was amended, as from 2 September 1996, pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160) by substituting the words "Environment Court" for the words "Planning Tribunal".

Subsection (6) was repealed, as from 1 August 2003, by section 86(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Rights of objection

This heading was inserted, as from 10 August 2005, by section 124 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

357 Right of objection to local authorities against certain decisions

(1) There is a right of objection to the relevant local authority for a person who has made an application or given notice, as the case may be,—

(a) to a territorial authority under section 10(2) (which relates to existing uses of land):

(b) to a local authority under section 88(1), in respect of a determination made under section 88(3) (which relates to whether a resource consent application is complete):

(c) to a territorial authority under section 182(1) (which relates to the refusal of a territorial authority to remove the whole or a part of a designation):

(d) to a territorial authority under section 184(1) (which relates to the lapsing of a designation).

(2) A submitter whose submission is struck out under section 41C(7) has a right of objection to the relevant local authority.

(3) A person has a right of objection to a regional council in respect of a public notice given by the council under section 369(11) (which relates to the authorisation or prohibition of certain fuel or fuel-burning equipment in a clean air zone).

Subsection (1) was amended, as from 7 July 1993, by section 161(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting paras (da) and (db).

Subsections (1A) and (1B) were inserted, as from 1 August 2003, by section 87(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2) was amended, as from 7 July 1993, by section 161(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or, if the application or review was notified, no submissions were received or any submissions received have been withdrawn,".

Subsection (2) was substituted, as from 1 August 2003, by section 87(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2A) was inserted, as from 1 August 2003, by section 87(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was amended, as from 7 July 1993, by section 161(3) Resource Management Amendment Act 1993 (1993 No 65) by adding the words ", unless the application is refused by an officer of the consent authority exercising delegated authority under section 34".

Subsection (3) was amended, as from 1 August 2003, by section 87(3)(a) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "sections 104B and 104C" for the expression "section 105". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (3) was amended, as from 1 August 2003, by section 87(3)(b) Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "34A" for the expression "34". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4A) was inserted, as from 17 December 1997, by section 59 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (4B) was inserted, as from 1 August 2003, by section 87(4) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (6) was amended, as from 7 July 1993, by section 161(4) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "The consent authority shall give at least 5 working days' notice of the commencement date and time, and the place, of a hearing of an objection to the objector" for the words "Any meeting to hear an objection may be adjourned from time to time".

Subsection (7)(c) was amended, as from 7 July 1993, by section 161(5) Resource Management Amendment Act 1993 (1993 No 65) by substituting the word "appropriate" for the words "likely to be affected".

Section 357 was substituted, as from 10 August 2005, by section 124 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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) in respect of a request to provide further information, for a person who has been so requested by a consent authority under section 92(1):

(c) in respect of a request to consent to the commissioning of a report, for a person who has been so requested under section 92(2)(b):

(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 consent authority's decision on an application or review of a kind referred to in subsection (2), for an applicant or consent holder if—

(i) the application or review was not notified or notice of the application or review was not served (in accordance with section 93, section 94, section 127(3), or section 130); or

(ii) the application or review was notified or served and—

(A) no submissions were received; or

(B) any submissions received were withdrawn.

(2) Unless subsection (3) applies, subsection (1)(e) applies to—

(a) an application made under section 88 for a resource consent; or

(b) an application made under section 127 for a change or cancellation of a condition of a resource consent; or

(c) a review of the conditions of a resource consent under sections 128 to 132; or

(d) an application made under section 221 to vary or cancel a condition specified in a consent notice.

(3) Subsection (2) does not apply in the case of an application for a resource consent under section 88 if, under sections 104B and 104C, the consent authority refuses to grant the resource consent, unless the application is refused by an officer of the consent authority exercising delegated authority under section 34A.

Sections 357A to 357D were inserted, as from 10 August 2005, by section 124 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 149B(2), to the local authority in respect of that requirement:

(b) for a person required by the Minister to pay costs under section 149B(3) or (4), to the Minister in respect of that requirement.

Sections 357A to 357D were inserted, as from 10 August 2005, by section 124 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

357C Procedure for making and hearing objection under sections 357 to 357B

(1) An objection under section 357 or section 357A or section 357B must be made by notice in writing to the local authority, consent authority, or Minister, as the case may be, not later than 15 working days after the decision or requirement is notified to that person, or within such further time as may in any case be allowed by the consent authority, local authority, or Minister.

(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 local authority or consent authority 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 local authority or Minister, as the case may be, 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.

Sections 357A to 357D were inserted, as from 10 August 2005, by section 124 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

357D Decision on objections made under sections 357 to 357B

(1) The consent authority or local authority 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 consent authority or local authority must, within 15 working days after making its decision on the objection, give to the objector, and to every person whom the local authority 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.

Sections 357A to 357D were inserted, as from 10 August 2005, by section 124 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

358 Appeals against certain decisions or objections

(1) Any person who has made an objection under section 357 or section 357A or section 357B may appeal to the Environment Court against the decision on the objection.

(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 Environment 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.

Subsection (1) was substituted, as from 7 July 1993, by section 162 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1) was amended, as from 10 August 2005, by section 125(1) Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "or section 357A or section 357B" after the expression "357". *See* sections 131 to 135 of that Act as to the transitional provisions.

The words "Environment Court" in subsection (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (2) was amended, as from 10 August 2005, by section 125(2) Resource Management Amendment Act 2005 (2005 No 87) by substituting the expression "357D(2)" for the expression "357(7)(c)". *See* sections 131 to 135 of that Act as to the transitional provisions.

The words "Environment Court" in subsection (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 the Crown Bank Account in accordance with the Public Finance Act 1989.

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) Prescribing any person or class of person to whom any regional council or territorial authority shall, in accordance with section 90(3), forward a copy of any application for a resource consent:

(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 shall be liable to pay for the occupation of the coastal marine area, the bed of any river or lake which is land of the Crown, and the extraction of sand, shingle, shell, and other natural materials from lands of the Crown, and 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 Environment 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)

(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:

(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.

Subsection (1)(aa) was inserted, as from 7 July 1993, by section 163 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(ab) was inserted, as from 1 February 1995, by section 26(1) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

Subsection (1)(ac) was inserted, as from 1 August 2003, by section 88(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (1)(ba) and (bb) were inserted, as from 2 September 1996, by section 19 Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1)(bc) was inserted, as from 9 October 2006, by section 36(2) Summary Proceedings Amendment Act 2006 (2006 No 13).

Subsection (1)(c) was amended, as from 7 July 1993, by section 163(2) of 1993 No 65 by inserting the words "amount, methods for calculating the amount, and" and the word "shell,".

The words "Environment Court" in subsection (1)(f) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Court" in subsection (1)(f) (where they secondly appear) were substituted, as from 2 September 1996, for the word "Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1)(h) was amended, as from 7 July 1993, by section 163(3) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "15" for the expression "15(1)", and by inserting the word ", air,".

Subsection (1)(ha) was inserted, as from 1 February 1995, by section 26(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

Subsection (1)(ha)(i) was amended, as from 1 August 2003, by section 88(2) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "restricted discretionary activities," after the words "controlled activities,". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraphs (1)(hb) to (hd) were inserted, as from 1 February 1995, by section 26(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

Subsection (1)(hd) was repealed, as from 17 December 1997, by section 60(1) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (1)(he) was inserted, as from 1 February 1995, by section 26(2) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

Paragraph (1)(he) was amended, as from 1 July 2005, by section 11(3) Maritime Transport Amendment Act 2004 (2004 No 98) by substituting the words "Maritime New Zealand" for the words "Maritime Safety".

Paragraphs (1)(hf) to (hh) were inserted, as from 17 December 1997, by section 60(2) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (1)(hi) was inserted, as from 10 August 2005, by section 127 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsections (2A) and (2B) were inserted, as from 1 February 1995, by section 26(3) Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act Commencement Order 1994 (SR 1994/271).

Subsections (2C) and (2D) were inserted, as from 17 December 1997, by section 60(3) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

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 the 10th day of September 1966 and ending with the 31st day of 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)

(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).

Paragraph (d)(v) was repealed, as from 7 July 1993, by section 164 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.

Paragraph (d) was amended, as from 7 July 1993, by section 165 Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression ", (3), (4), or (8)" for the expression "or (3)".

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 one 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 to, 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 con-

sent 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).

Subsection (4) was substituted, as from 7 July 1993, by section 166 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (4) was amended, as from 17 December 1997, by section 61 Resource Management Amendment Act 1997 (1997 No 104) by inserting the words “, or a coastal permit to do something that would otherwise contravene section 15,”. *See* section 78 of that Act as to the transitional provisions.

Subsection (5) was substituted, as from 7 July 1993, by section 166 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (6) was substituted, as from 7 July 1993, by section 166 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (7) was substituted, as from 7 July 1993, by section 166 Resource Management Amendment Act 1993 (1993 No 65).

Subsections (8) to (12) were inserted, as from 7 July 1993, by section 166 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (13) was inserted, as from 1 August 2003, by section 89 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (13) was amended, as from 10 August 2005, by section 126 Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "to" for the word "and" in the first place where it appears. *See* sections 131 to 135 of that Act as to the transitional provisions.

Transitional regional coastal plans

370 Existing notices, bylaws, etc, to become regional coastal plans

(1) Where one 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.

Subsection (2)(d) was inserted, as from 7 July 1993, by section 167(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was amended, as from 7 July 1993, by section 167(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or review".

Subsection (4) was substituted, as from 7 July 1993, by section 167(3) 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).

Subsection (1)(c) was substituted, as from 7 July 1993, by section 168(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2A) was inserted, as from 7 July 1993, by section 168(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3)(c) was substituted, as from 7 July 1993, and subsection (3)(d) inserted, as from 7 July 1993, by section 168(3) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (5) was inserted, as from 7 July 1993, by section 168(4) 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 further formality, 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.

Subsection (3)(c) was amended, as from 1 August 2003, by section 90 Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "made operative under clause 20" for the words "notified under clause 5". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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)

(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 within the meaning of section 9(4) shall be deemed to be a discretionary activity.

Subsection (4) was amended, as from 7 July 1993, by section 169(3) Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "and everything described in section 13(2)".

Subsection (2) was substituted, as from 7 July 1993, by section 169(1), Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was repealed, as from 7 July 1993, by section 169 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).

Subsection (1)(c) was substituted, as from 7 July 1993, by section 170(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (4) was substituted, as from 7 July 1993, and subsection (5) inserted, as from 7 July 1993, by section 170(2) 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 110KV with a capacity up to and including 100MVA:

(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; and

(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 110KV and a capacity exceeding 100MVA:

(ii) Pipes for the transmission of natural or manufactured gas at a gauge pressure exceeding 2000 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.

Subsection (1) was amended, as from 7 July 1993, by section 171(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or any proposed district plan".

Subsection (1)(a)(iv) was substituted, as from 10 August 2005, by section 128 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subsection (2) was substituted, as from 7 July 1993, by section 171(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was substituted, as from 7 July 1993, by section 171(2) 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) Two 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 the 28th day of 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.

Subsection (1) was substituted, as from 7 July 1993, and subsections (1A), (1B) and (1C) were inserted, as from 7 July 1993, by section 172 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsection (1)(c) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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."

The section was amended, as from 7 July 1993, by section 173 Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "(g)" for the expression "(f)".

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 was inserted, as from 7 July 1993, by section 174 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 the 1st day of October 1991 and of enabling the consent to authorise the activity.

Section 383A was inserted, as from 7 July 1993, by section 175 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 was substituted, as from 7 July 1993, by section 176(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (5) was inserted, as from 1 January 2005, by section 21 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 the 30th day of 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 30th day of 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 the 30th day of 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 the 31st day of 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

Occupy*[Repealed]*

Occupy: this definition was repealed, as from 1 January 2005, by section 22 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

[Repealed]

(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 was inserted, as from 7 July 1993, by section 177 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (12) was inserted, as from 2 September 1996, by section 20 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 condi-

tions 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 one year after the date on which the permission would have expired if this Act had not been passed.

Subsection (2) was substituted, as from 7 July 1993, by section 178(1) Resource Management Amendment Act 1993 (1993 No 65). The new subsection replaced but was identical to the subsection substituted by regulation 6 Resource Management (Transitional Provisions) Regulations (No 2) 1992 (SR 1992/107).

Subsection (3) was amended, as from 7 July 1993, by section 178(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting in each case the expression "391 or section 391A" for both occurrences of the expression "389".

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 the 10th day of September 1966 and ending with the 31st day of 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 thirty-fifth 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 thirty-fifth 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).

Subsection (1)(a)(iii) was amended, as from 7 July 1993, by section 179(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "subparagraph (vii)" for the expression "subparagraphs (v) or (vii)".

Subsection (1)(c) was amended, as from 7 July 1993, by section 179(2) and (3) Resource Management Amendment Act 1993 (1993 No 65) respectively by adding to subparagraph (iii) the word "; or" and by inserting subparagraph (iv).

Subsection (2) was substituted, as from 7 July 1993, by section 179(4) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (3) was substituted, as from 7 July 1993, by section 179(4) 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 tak-

ing, 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 section 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 thirty-fifth 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 thirty-fifth 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.

Subsection (1) was amended, as from 7 July 1993, by section 180(1) Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "and every authorisation under section 9(1)(c) of that Act".

Subsection (4): see regulation 13(3) Resource Management (Transitional, Fees, Rents, and Royalties) Regulations 1991 (SR 1991/206) as to the insertion of paragraph (aa), during the period 1 October 1991 to 31 September 1994.

Subsection (4)(aa) was inserted, as from 2 September 1996, by section 21 Resource Management Amendment Act 1996 (1996 No 160).

Subsection (5) was substituted, as from 1 October 1991, by section 2(2) Crown Minerals Amendment Act 1991 (1991 No 102).

Subsections (6) and (7) were inserted, as from 7 July 1993, by section 180(2) 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 was substituted, as from 7 July 1993, by section 181 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 commencement 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 was substituted, as from 7 July 1993, by section 181 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 the 1st day of October 1991).

Section 390A was inserted, as from 7 July 1993, by section 181 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsections (1) and (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 was inserted, as from 7 July 1993, by section 181 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 in accordance with section 93 or notice of the application served in accordance with section 94; 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 in accordance with section 93; 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 was inserted, as from 7 July 1993, by section 181 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(a) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "or notice of the application served in accordance with section 94" after the expression "section 93". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 the 1st day of 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 was inserted, as from 7 July 1993, by section 181 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.

The words "Environment Court" in subsection (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 in accordance with section 93 or notice of the application served in accordance with section 94; 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 was inserted, as from 7 July 1993, by section 182 Resource Management Amendment Act 1993 (1993 No 65) and is almost identical to section 391A as inserted by regulation 7 Resource Management (Transitional Provisions) Regulations (No 2) 1992 (SR 1992/107).

Subsection (2)(a) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "or notice of the application served in accordance with section 94" after the expression "section 93". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

392 Provisions of Clean Air Act 1972 may be considered on applications for resource consents for discharging contaminants into the air

[Expired]

Subsection (2) was inserted, as from 7 July 1993, by section 183 Resource Management Amendment Act 1993 (1993 No 65).

Section 392 expired, as from 1 October 1994, pursuant to subsection (2) of this section.

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 appli-

cation 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 in accordance with section 93 or notice of the application served in accordance with section 94 of this Act; and

(f) Notwithstanding paragraph (e), where the harbour works the subject of any such application are a re-

stricted coastal activity (including a restricted coastal activity the subject of a direction in accordance with section 372 of this Act), 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 referred 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.

Subsection (1)(b) was amended, as from 7 July 1993, by section 184(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the expression "or (2)".

Subsection (1)(e) was substituted, as from 7 July 1993, and subsection (1)(f) inserted by section 184(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1)(e) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "or notice of the application served in accordance with section 94" after the expression "section 93". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (4) was inserted, as from 7 July 1993, by section 184(3) Resource Management Amendment Act 1993 (1993 No 65).

394 Transitional provisions relating to setting aside of esplanade reserves on reclamation

[Repealed]

Section 394 was repealed, as from 7 July 1993, by section 185 Resource Management Amendment Act 1993 (1993 No 65).

395 Applications for works, etc, in coastal marine area

(1) A regional council that receives an application for a coastal permit in respect of any reclamation, the construction of any structure, or the undertaking of any harbour works or the removal of any stone, shingle, sand, boulders, silt, mud, shell, or other material within the meaning of the Harbours Act 1950 in respect of the coastal marine area shall forward a copy of the application to the Minister of Transport.

(1A) A local authority which receives an application for a land use consent for any entry on to, or passing across, the surface of water of any navigable lake or river, or for the use of a bed of a navigable lake or river under section 13, shall forward a copy of the application to the Minister of Transport.

(2) The Minister of Transport shall, within 15 working days after receiving a copy of the application, report to the appropriate local authority on any navigation related matters that the Minister considers relevant to the application, including any conditions which the Minister considers should be included in the consent for this purpose, and a failure to report on or before that date may be taken as an indication that the Minister has nothing to report.

(3) The local authority shall—

(a) Ensure that a copy of the Minister's report under subsection (2) is served on the applicant and every person who has made a submission on the application; and

(b) Take the report into account in its consideration of the application.

(4)

Subsection (1A) was inserted, as from 7 July 1993, by section 186(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (2) was amended, as from 7 July 1993, by section 186(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "within 15 working days after receiving a copy of the application" for the words "on or before the closing date for submissions under section 97", and by substituting the words "appropriate local authority" for the words "regional council".

Subsection (3) was amended, as from 7 July 1993, by section 186(3) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "local authority" for the words "regional council".

Subsection (4) was repealed, as from 7 July 1993, by section 186(4) Resource Management Amendment Act 1993 (1993 No 65).

396 Applications for marine farming in coastal marine area *[Repealed]*

Subsection (2) was amended, as from 7 July 1993, by section 187 Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "within 15 working days after receiving a copy of the application" for the words "on or before the closing date for submissions under section 97".

Section 396 was repealed, as from 1 January 2005, by section 23 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 was inserted, as from 7 July 1993, by section 188 Resource Management Amendment Act 1993 (1993 No 65).

The reference to responsible chief executive replaced, as from 1 July 1995, a reference to the Director-General of the Ministry of Agriculture and Fisheries pursuant to section 6(1)(a) Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31).

Section 396A was repealed, as from 1 January 2005, by section 24 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

396B Notification of rule change affecting marine farming *[Repealed]*

Section 396B was inserted, as from 7 July 1993, by section 189 Resource Management Amendment Act 1993 (1993 No 65).

Section 396B was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "re-

stricted discretionary," after the expression "controlled,". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

The reference to responsible chief executive replaced, as from 1 July 1995, a reference to the Director-General of the Ministry of Agriculture and Fisheries pursuant to section 6(1)(a) Ministry of Agriculture and Fisheries (Restructuring) Act 1995 (1995 No 31).

Section 396B was repealed, as from 1 January 2005, by section 25 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

397 Existing applications for marine farming leases
[Repealed]

Subsection (3)(b) and (3)(b)(ii) were amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "or notice of the application served in accordance with section 94" after the expression "section 93". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Section 397 was repealed, as from 1 January 2005, by section 26 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 was repealed, as from 1 January 2005, by section 27 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.

Paragraph (a) was amended, as from 7 July 1993, by section 190 Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "390B(2)" for the expression "389(4)(b)(ii)".

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.

Sections 401A and 401B were inserted, as from 17 December 1997, by section 62 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (1) was amended, as from 1 January 2005, by section 28(1) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by substituting the expression "30 June 2007" for the expression "30 June 1999".

Subsection (3) was amended, as from 1 January 2005, by section 28(2) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by substituting the expression "1 July 2007" for the expression "1 July 1999".

Subsection (4) was amended, as from 1 January 2005, by section 28(3)(a) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by substituting the expression "1 July 2007" for the expression "1 July 1999".

Subsection (4) was amended, as from 1 January 2005, by section 28(3)(b) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by substituting the expression "30 June 2007" for the expression "30 June 1999".

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.

Sections 401A and 401B were inserted, as from 17 December 1997, by section 62 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Paragraph (a) was amended, as from 1 January 2005, by section 29 Resource Management Amendment Act (No 2) 2004 (2004 No 103) by omitting the words ", within the meaning of section 12(4),".

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 of this Act.

(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 opera-

tive, not being a proposed district plan constituted under section 373.

Subsection (1) was amended, as from 5 December 1991, by regulation 3 Resource Management (Transitional Provisions) Regulations (No 2) 1991 (SR 1991/256) to be read as if subs (1) was substituted and subss (1A) and (1B) were inserted.

Section 405 was substituted, as from 7 July 1993, by section 191 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 the 30th day of 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 was inserted, as from 7 July 1993, by section 191 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was amended, as from 17 December 1997, by section 63 Resource Management Amendment Act 1997 (1997 No 104) by substituting the words "in respect of any allotment of less than 4 hectares, a territorial authority

may impose a condition" for the words ", a territorial authority may impose a condition in respect of any allotment of less than 4 hectares". *See* section 78 of that Act as to the transitional provisions.

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.

Subsection (1)(a) was amended, as from 1 August 2003, by section 91 Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "may refuse to grant" for the words "Shall not grant". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (2) was inserted, as from 7 July 1993, by section 192 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 sec-

tions 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.

Subsection (1) was amended, as from 17 December 1997, by section 64 Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "108(2)(a)" for the expression "108(1)(a)". *See* section 78 of that Act as to the transitional provisions.

Section 407 was amended, as from 5 December 1991, by regulation 4 Resource Management (Transitional Provisions) Regulations (No 2) 1991 (SR 1991/256) to be read as if subss (3) and (4) were inserted.

Subsections (3), (4) and (5) were inserted, as from 7 July 1993, as from 7 July 1993, by section 193 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) of this Act shall apply to any subdivision of land for which a subdivision consent was granted on or after the 1st day of October 1991 and on or before the 30th day of June 1992.

Subsection (2) was inserted, as from 1 July 1992, by section 92(1) 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 pursuant to section 93.

(5) This section shall cease to have effect in a district on the date that the proposed district plan for the district becomes opera-

tive, not being a proposed district plan constituted under section 373.

Subsection (1) was amended, as from 17 December 1997, by section 65 Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "108(2)(a)" for the expression "108(1)(a)". *See* section 78 of that Act as to the transitional provisions.

Subsection (2A) was inserted, as from 7 July 1993, by section 194(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsections (4) and (5) were inserted, as from 7 July 1993, by section 194(2) 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 XXI 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.

Subsection (1) was amended, as from 17 December 1997, by section 66 Resource Management Amendment Act 1997 (1997 No 104) by substituting the expression "108(2)(a)" for the expression "108(1)(a)". *See* section 78 of that Act as to the transitional provisions.

Subsection (2) was inserted, as from 7 July 1993, by section 195 Resource Management Amendment Act 1993 (1993 No 65). It replaced and was identical to

subsection (2) as inserted by regulation 12 Resource Management (Transitional Provisions) Regulations (No 2) 1992 (SR 1992/107).

412 Expiry of certain sections

[Repealed]

Section 412 was repealed, as from 7 July 1993, by section 196 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 min-

ing 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 thirtieth 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 continue 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.

Subsection (1)(d) was amended, as from 7 July 1993, by section 197(1) Resource Management Amendment Act 1993 (1993 No 65) by adding the ex-

pression "; or". Subsection (1)(e) was inserted by section 197(2) of the same amendment Act.

Subsection (2) was amended, as from 7 July 1993, by section 197(3) Resource Management Amendment Act 1993 (1993 No 65) by omitting the expression "(9)", and also by inserting the expression "19(1) and (5),".

Subsection (3) was amended, as from 7 July 1993, by section 197(4) Resource Management Amendment Act 1993 (1993 No 65) by inserting the expression "under subsection (1)(c) or (d)".

Subsection (3A) was inserted, as from 7 July 1993, by section 197(5) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (9)(c) was substituted, as from 7 July 1993, and subsection 9(d) inserted, as from 7 July 1993, by section 197(6) 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 thirtieth 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 District Land Registrar under this section, the District Land Registrar shall enter on every certificate of title, lease, licence to occupy, provisional register, or other instrument of title registered or filed in the District Land Registrar'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 District Land Registrar 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.

Subsection (1) was amended, as from 7 July 1993, by section 198(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "section 413(1)(e)" for the expression "section 413".

Subsection (5) was substituted, as from 7 July 1993, by section 198(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (8) was inserted, as from 7 July 1993, by section 198(3) 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, subsections (1) and (2) of section 9 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 the 1st day of October 1991 under any Act, regulation, or bylaw, including an Act, regulation, or bylaw amended, repealed, or revoked by this Act, subsections (1) and (2) of section 9 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,—

subsections (1) and (2) of section 9 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 was inserted, as from 7 July 1993, by section 199 Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was substituted, and subsections (1A) and (1B) were inserted, as from 2 September 1996, by section 22(1) Resource Management Amendment Act 1996 (1996 No 160). *See* also regulation 3 Resource Management (Transitional) Regulations 1994 (SR 1994/34) (revoked as from 2 September 1996, by section 22(2) Resource Management Amendment Act 1996), which provided, until 1 October 1996, for the replacement of subsection (1) of this section.

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 the 1st day of October 1991.

(1B) For the purposes of this Act, section 15(1)(d) shall 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, paragraphs (b) and (c) of section 14(1) 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 the 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 the 1st day of 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 the 1st day of 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 the 1st day of 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 paragraphs (b) and (c) of section 14(1), 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 watercourses) 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 the 1st day of 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 one 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 the 1st day of 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 the 1st day of 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(1)(a) shall not apply to the activities of ships, boats, and vessels in respect of the operational needs of those craft where, before the 1st day of 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(1)(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 the 1st day of 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.

Subsection (1) was amended, as from 5 December 1991, by regulation 5(1) Resource Management (Transitional Provisions) Regulations (No 2) 1991 (SR 1991/256) as if subsection (1) was substituted and subsections (1A) to (1D) were inserted.

Subsection (1) was substituted, and subsections (1A), (1B), and (1C) were inserted, as from 7 July 1993, by section 200(1) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (1) was substituted, as from 2 September 1996, by section 23(1) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1A) was substituted, as from 2 September 1996, by section 23(1) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1B) was substituted, as from 2 September 1996, by section 23(1) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (1B) was substituted, as from 17 December 1997, by section 67(1) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions. See section 67(2) of that Act which states that "Notwithstanding the amendment of section 418(6)(a)(ii) of the principal Act by section 23(2) of the Resource Management Amendment Act 1996, section 418(6) of the principal Act is to be treated as having continued to apply to leases and licences described in section 426(1) of the principal Act as if that section 23(2) had not been enacted".

Subsection (1C) was substituted, as from 2 September 1996, by section 23(1) Resource Management Amendment Act 1996 (1996 No 160).

Subsection (3) was amended, as from 5 December 1991, by regulation 5(2) Resource Management (Transitional Provisions) Regulations (No 2) 1991 (SR 1991/256) as if subsection (3) was substituted and subsection (3A) was inserted.

Subsection (3) was substituted, as from 7 July 1993, and subsections (3A) to (3D) were inserted, as from 7 July 1993, by section 200(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (4) was amended, as from 7 July 1993, by section 200(3) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "(b) and (c)" for the expression "(a) and (b)".

Subsection (5)(b) was amended, as from 7 July 1993, by section 200(4) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "34A" for the expression "35A".

Subsection (6)(a)(ii) was amended, as from 2 September 1996, by section 23(2) Resource Management Amendment Act 1996 (1996 No 160) by omitting the words "or any lease or licence described in section 426(1)". *See* section 67(2) Resource Management Amendment Act 1997 (1997 No 104) which states that "Notwithstanding the amendment of section 418(6)(a)(ii) of the principal Act by section 23(2) of the Resource Management Amendment Act 1996, section 418(6) of the principal Act is to be treated as having continued to apply to leases and licences described in section 426(1) of the principal Act as if that section 23(2) had not been enacted".

Subsection (6)(a)(ii) was amended, as from 1 January 2005, by section 30(1) Resource Management Amendment Act (No 2) 2004 (2004 No 103) by omitting the words "or any lease or licence described in section 426(1)".

Subsection (6)(e) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "a restricted discretionary activity," after the words "controlled activity,". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subsection (6A) was inserted, as from 7 July 1993, by section 200(5) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (6A) was amended, as from 2 September 1996, by section 23(3) Resource Management Amendment Act 1996 (1996 No 160) by substituting the expression "12(2)(a)" for the expression "120(2)(a)".

Subsections (6B) and (6C) were inserted, as from 7 July 1993, by section 200(5) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (7) was amended, as from 1 August 2003, by section 95 Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "a restricted discretionary activity," after the words "controlled activity,". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Section 418 was amended, as from 5 December 1991, by regulation 5(3) Resource Management (Transitional Provisions) Regulations (No 2) 1991 (SR 1991/256) as if subsection (8) was added.

Subsections (8) and (9) were inserted, as from 7 July 1993, by section 200(6) Resource Management Amendment Act 1993 (1993 No 65).

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 further formality, 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)

(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.

Subsection (2) was amended, as from 7 July 1993, by section 201(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "for that designation;".

Subsection (3) was amended, as from 17 December 1997, by section 68(1) Resource Management Amendment Act 1997 (1997 No 104) by inserting the words "and section 184A". *See* section 78 of that Act as to the transitional provisions.

Subsection (4) was amended, as from 7 July 1993, by section 201(2) Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "until whichever is the earlier of—".

Subsection (4)(a) and (b) was repealed, as from 7 July 1993, by section 201(2)(b) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (4) was repealed, as from 17 December 1997, by section 68(2) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Subsection (5) was substituted, as from 7 July 1993, and subsection (5A) inserted, as from 7 July 1993, by section 201(3) Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subsection (8) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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 further formality, 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.

The words "Environment Court" in subsection (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

The reference to the "Historic Places Act 1993" in subsection (6)(b) replaced, as from 1 July 1993, a reference to the "Historic Places Act 1980", pursuant to section 118(1) Historic Places Act 1993 (1993 No 38).

The words "Environment Court" in subsections (3) and (7) were substituted, as from 2 September 1996, for the words "Planning Tribunal", pursuant to section 6(2)(a) 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 of this Act; 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.

The words "Environment Court" in subsections (2) and (4) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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) of this section and section 427 of this Act 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 one 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 was amended, as from 7 July 1993, by 202(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting in all cases the expression "3 years" for the expression "2 years".

Subsection (2) was amended, as from 2 September 1996, by section 24(1) Resource Management Amendment Act 1996 (1996 No 160) by substituting the expression "8 years" for the expression "3 years".

Subsection (3) was amended, as from 2 September 1996, by section 24(1) Resource Management Amendment Act 1996 (1996 No 160) by substituting the expression "8 years" for the expression "3 years".

Subsection (4) was amended, as from 2 September 1996, by section 24(1) Resource Management Amendment Act 1996 (1996 No 160) by substituting the expression "8 years" for the expression "3 years".

Subsection (8) was inserted for the period 1 October 1991 to 31 December 1992 by regulation 19 Resource Management (Transitional, Fees, Rents, and Royalties) Regulations 1991 (SR 1991/206) .

Subsection (8) was inserted, as from 7 July 1993, by section 202(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (9) was inserted for the period 18 June 1992 to 30 September 1994 by regulation 13 Resource Management (Transitional Provisions) Regulations (No 2) 1992 (SR 1992/107).

Subsection (9) was substituted, as from 7 July 1993, by section 202(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsections (10) and (11) were inserted, as from 7 July 1993, by section 202(2) Resource Management Amendment Act 1993 (1993 No 65).

Subsection (11) was amended, as from 2 September 1996, by section 24(2) Resource Management Amendment Act 1996 (1996 No 160) by inserting the words "or subsection (4)".

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.

Subsection (3)(c) was amended, as from 7 July 1993, by section 203 Resource Management Amendment Act 1993 (1993 No 65) by inserting the expression "or (2)".

Subsection (4) was inserted, as from 1 January 2005, by section 31 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 was inserted, as from 7 July 1993, by section 204 Resource Management Amendment Act 1993 (1993 No 65).

426 Leases and licences executed under Marine Farming Act 1971

[Repealed]

Subsection (1) was amended, as from 28 April 1992, by section 5(1) Marine Farming Amendment Act 1992 (1992 No 33) by inserting the words "", except as provided in subsection (1A),"".

Subsection (1A) was inserted, as from 28 April 1992, by section 5(2) Marine Farming Amendment Act 1992 (1992 No 33).

Subsection (3) was amended, as from 7 July 1993, by section 205 Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "or after"".

Section 426 was repealed, as from 1 January 2005, by section 32 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 functions, 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 the 30th day of 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 the 30th day of 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.

Subsection (2)(a) was amended, as from 7 July 1993, by section 206 Resource Management Amendment Act 1993 (1993 No 65) by omitting the words "or waters covering that area".

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.

The words "Environment Court" in subsections (1) to (3) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Judge" in subsections (1) to (3) were substituted, as from 2 September 1996, for the words "Planning Judge" pursuant to section 6(2)(b) Resource Management Amendment Act 1996 (1996 No 160).

The words "Environment Commissioner" and "Deputy Environment Commissioner" were substituted, as from 2 September 1996, for the words "Planning Commissioner" and "Deputy Planning Commissioner" pursuant to section 6(2)(c) 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 one year

(1) The Minister of Conservation shall, in accordance with this Act and within one 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.

Subsection (1) was amended, as from 7 July 1993, by section 207 Resource Management Amendment Act 1993 (1993 No 65) by substituting the word "proposed" for the word "draft".

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 the 1st day of 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.

Subsection (1) was substituted, as from 7 July 1993, and subsection (1A) inserted, as from 7 July 1993, by section 208 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 the 30th day of June 1992 may be collected as if that Act had not been repealed by this Act.

Schedule 1

Sections 60, 64, 65, and 73

Preparation, change, and review of policy statements and plans

Contents

Part 1

The Analysis to Schedule 1 was substituted, as from 17 December 1997, by section 69 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

The Analysis to Schedule 1 was substituted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

1
Preparation and change of policy statements and plans by local authorities

1 Interpretation and time limits

(1) In this Schedule, a reference to a policy statement or plan includes a reference to a change to a policy statement or plan.

(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.

Subclause (4) was inserted, as from 7 July 1993, by section 209 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) the board of any foreshore and seabed reserve in the region.

Subclause (2) was substituted, as from 17 January 2005, by section 36(1) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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

1—*continued*

(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) the board of any foreshore and seabed reserve 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 XVIII to XXVII 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.

Subclause (1)(d) was amended, as from 17 January 2005, by section 36(2) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by inserting the expression "; and". *See* sections 40 to 43 of that Act.

Subclause (1)(d) was amended, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "and tribal runanga". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (1)(e) was inserted, as from 17 January 2005, by section 36(2) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

Subclause (3)(b) was amended, as from 20 August 1998, by section 27 Resource Management Amendment Act 1994 (1994 No 105) by substituting the words "Parts 18 to 28 of the Maritime Transport Act 1994" for the words "the Marine Pollution Act 1974". *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Subclause (4) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

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.

Clauses 3A to 3C were inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Clauses 3A to 3C were inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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

1—*continued*

plan has been the subject of consultation with the same person, group of persons, or their representative or agent under another enactment within the 12 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.

Clauses 3A to 3C were inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 local 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—

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) The provisions of section 168(3) or section 189(3) shall apply to any requirement or modification under subclause (6).

(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 further formality, amend its proposed district plan accordingly.

Clause 4 was substituted, as from 7 July 1993, by section 210 Resource Management Amendment Act 1993 (1993 No 65).

Subclause (3) was amended, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "", in accordance with section 168(3)"". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (7) was amended, as from 17 December 1997, by section 70 Resource Management Amendment Act 1997 (1997 No 104) by inserting the words ""or section 189(3)"". *See* section 78 of that Act as to the transitional provisions.

Subclauses (9) and (10) were inserted, as from 1 August 2003, by section 92(1) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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—

1—*continued*

(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 local 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—

(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—

1—*continued*

(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 one copy of its proposed policy statement or plan without charge to—

(a) The Minister for the Environment; and

(b)

(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; and

(g) the board of any foreshore and seabed reserve in the area.

(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).

Subclause (1) was substituted, as from 7 July 1993, and subcls (1A), (1B), and (1C) were inserted, as from 7 July 1993, by section 211(1) Resource Management Amendment Act 1993 (1993 No 65).

Subclause (1A)(a) was amended, as from 7 July 2004, by section 13 Local Government (Rating) Amendment Act 2004 (2004 No 66) by substituting the word "ratepayer" for the words "person whose name for the time being appears in the occupier's column of the valuation roll".

Subclause (3)(b) was amended, as from 7 July 1993, by section 211(2) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or variation".

Subclause (4)(b) was repealed, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

1—*continued*

Subclause (4)(f) was amended, as from 17 January 2005, by section 36(3) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by inserting the expression "; and". *See* sections 40 to 43 of that Act.

Subclause (4)(f) was amended, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "and tribal runanga" after the word "authorities". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (4)(g) was inserted, as from 17 January 2005, by section 36(3) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

6 Making submissions

Any person, including the local authority in its own area, may, in the prescribed form, make a submission to the relevant local authority on a proposed policy statement or plan that is publicly notified under clause 5.

Clause 6 was substituted, as from 7 July 1993, by section 212 Resource Management Amendment Act 1993 (1993 No 65).

7 Public notification of submissions

(1) A local authority shall publicly notify, through a prominent advertisement,—

(a) The availability of a summary of all 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 date on which further submissions close, which date shall not be less than 20 working days after the date of notification; and

(d) The address for service of the local authority.

(2) A local authority shall send a copy of the public notice advising of the summary of all decisions requested by persons making submissions to all persons who made submissions.

Clause 7 was substituted, as from 7 July 1993, by section 212 Resource Management Amendment Act 1993 (1993 No 65).

1—*continued*

8 Further submissions

Any person, including the local authority in its own area, may, in the prescribed form, make a further submission to the relevant local authority, but only in support of or in opposition to those submissions made under clause 6 on a proposed policy statement or plan.

Clause 8 was substituted, as from 7 July 1993, by section 212 Resource Management Amendment Act 1993 (1993 No 65).

8A Service of further submissions

Where a person makes a further submission under clause 8, that person shall, within 5 working days after making the submission to the local authority, serve a copy of the further submission on the person who made a submission under clause 6 to which the further submission relates.

Clauses 8A to 8D were inserted, as from 7 July 1993, by section 212 Resource Management Amendment Act 1993 (1993 No 65).

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—

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.

Clause 8AA was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Clauses 8A to 8D were inserted, as from 7 July 1993, by section 212 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.

1—*continued*

Clauses 8A to 8D were inserted, as from 7 July 1993, by section 212 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.

Clauses 8A to 8D were inserted, as from 7 July 1993, by section 212 Resource Management Amendment Act 1993 (1993 No 65).

The words "Environment Court" in subclause (1)(a) and (b) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subclause (1)(a) and (1)(b) were substituted, as from 1 August 2003, by section 92(2) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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.

1—*continued*

Clause 9 was substituted, as from 7 July 1993, by section 213 Resource Management Amendment Act 1993 (1993 No 65).

Subclause (3) was amended, as from 1 August 2003, by section 92(3) Resource Management Amendment Act 2003 (2003 No 23) by substituting the word "allow" for the word "require". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

10 Decision of local authority

(1) Subject to clause 9, whether or not a hearing is held on a proposed policy statement or plan, the local authority shall give its decisions, which shall include the reasons for accepting or rejecting any submissions (grouped by subject-matter or individually).

(2) The decisions of the local authority may include any consequential alterations arising out of submissions and any other relevant matters it considered relating to matters raised in submissions.

(3) If a local authority publicly notifies a proposed policy statement or plan under clause 5, it must, not later that 2 years after giving that notice, make its decisions under subclause (1) and publicly notify that fact.

(4) On and from the date of the public notice given under subclause (3), the proposed plan is amended in accordance with the decisions of the local authority given under subclause (1).

Clause 10 was substituted, as from 7 July 1993, by section 214(1) Resource Management Amendment Act 1993 (1993 No 65).

Subclauses (2) and (3) were inserted, as from 2 September 1996, by section 25 Resource Management Amendment Act 1996 (1996 No 160). *See* section 28 of that Act as to validation of policy statements plans.

Subclause (3) was substituted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (4) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

11 Notification of decision

(1) At the same time as a local authority gives public notice under clause 10(3), it shall serve, on every person who made a sub-

1—*continued*

mission on a provision, a notice of decision and a statement of the time within which an appeal may be lodged on that provision.

(2) Where a decision has been made under clause 9(2), the territorial authority shall also send or provide a notice of decision to land owners and occupiers who, in the territorial authority's opinion, are directly affected by the decision.

(3) If the local 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 (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.

Clause 11 was substituted, as from 7 July 1993, by section 214(1) Resource Management Amendment Act 1993 (1993 No 65).

Subclause (1) was amended, as from 2 September 1996, by section 26 Resource Management Amendment Act 1996 (1996 No 160) by substituting the words "At the same time as a local authority gives public notice under clause 10(3), it" for the words "A local authority".

Subclause (1) was amended, as from 1 August 2003, by section 92(4) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "a notice of decision and a statement of the time within which an appeal may be lodged" for the words "a copy of its decision". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subclause (2) was amended, as from 1 August 2003, by section 92(5) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "send or provide a notice of decision to" for the word "notify". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subclause (3) was inserted, as from 1 August 2003, by section 92(6) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

12 Record of effect of decisions on provisions other than requirements

[Repealed]

Clause 12 was repealed, as from 7 July 1993, by section 214(1) Resource Management Amendment Act 1993 (1993 No 65).

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)

(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.

Subclause (1) was amended, as from 7 July 1993, by section 214(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "30" for the expression "20".

Subclause (4) was substituted, as from 7 July 1993, by section 214(3) Resource Management Amendment Act 1993 (1993 No 65).

1—*continued*

Subclause (4) was amended, as from 1 August 2003, by section 92(7) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "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" for the words "a copy of the decision by the requiring authority or heritage protection authority". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subclause (5) was repealed, as from 7 July 1993, by section 214(3) Resource Management Amendment Act 1993 (1993 No 65).

Subclause (6) was inserted, as from 1 August 2003, by section 92(8) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 the person referred to the provision or the matter in the person's submission on the proposed policy statement or plan.

(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 notice of decision of the requiring authority or heritage protection authority under clause 13, as the case may be.

1—*continued*

(5) The appellant must serve a copy of the notice in the prescribed manner.

The words "Environment Court" in subcls (1), (3), (4) and (5) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subclause (2) was amended, as from 7 July 1993, by section 214(4) Resource Management Amendment Act 1993 (1993 No 65) by substituting the word "included" for the words "a requirement".

Subclause (4) was substituted, as from 7 July 1993, by section 214(5) Resource Management Amendment Act 1993 (1993 No 65).

Subclause (5)(b) was substituted, and (5)(ba) was inserted, as from 17 December 1997, by section 71 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Clause 14 was substituted, as from 1 August 2003, by section 92(9) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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 Environment Court hears an appeal against a provision of a proposed regional coastal plan, that appeal is an inquiry and the Environment 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 proposed regional council to make modifications to, deletions from, or additions to, the regional coastal plan.

Subclause (1) was amended, as from 2 September 1996, pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160) by substituting the words "Environment Court" for the words "Planning Tribunal".

Subclause (2) was amended, as from 2 September 1996, pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160) by substituting the words "Environment Court" for the word "Tribunal".

1—*continued*

Subclause (2) was substituted, as from 1 August 2003, by section 92(10) Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subclause (2) was substituted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (3) was amended, as from 2 September 1996, pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160) by substituting the words "Environment Court" for the word "Tribunal".

Subclause (3) was amended, as from 1 August 2003, by section 92(11) Resource Management Amendment Act 2003 (2003 No 23) by substituting the words "an appeal against a provision of a regional coastal plan, that appeal" for the words "a reference into a regional coastal plan, that reference". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subclause (3) was amended, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87) by inserting the word "proposed" before the word "regional". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (3)(a) was amended, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87) by substituting the word "appellant" for the word "applicant". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (3)(b) was amended, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87) by inserting the words "given under section 293(1)" after the word "direction". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (3)(b) was amended, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87) by inserting the word "proposed" before the word "regional". *See* sections 131 to 135 of that Act as to the transitional provisions.

16 Amendment of proposed policy statement or plan

(1) A local authority shall make an amendment to its proposed policy statement or plan to give effect to any direction in a national environmental standard or a national policy statement or to any directions of the Environment Court under section 292.

(2) A local authority may make an amendment, without further formality, 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) A local authority must make an amendment, without further formality, to its policy statement or regional plan or district

1—*continued*

plan to give effect to a direction to include specific provisions under section 55.

Clause 16 was substituted, as from 7 July 1993, by section 215 Resource Management Amendment Act 1993 (1993 No 65).

Subclause (1) was amended, as from 2 September 1996, pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160) by substituting the words "Environment Court" for the words "Planning Tribunal".

Subclause (1) was amended, as from 1 August 2003, by section 92(12) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "to any direction in a national environmental standard or a national policy statement or" after the word "effect". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subclause (1) was amended, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87) by adding the words "under section 292". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (3) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Clause 16A was inserted, as from 7 July 1993, by section 215 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.

1—*continued*

(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).

Clause 16B was inserted, as from 7 July 1993, by section 215 Resource Management Amendment Act 1993 (1993 No 65).

Subclause (2) was inserted, as from 2 September 1996, by section 27 Resource Management Amendment Act 1996 (1996 No 160).

Subclause (3) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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 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.

Subclause (1) was amended, as from 7 July 1993, by section 216(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the words "or variations under clause 16A".

Subclauses (1A) and (1B) were inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

1—*continued*

The words "Environment Court" in subclause (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subclause (2) was amended, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87) by omitting the words ", with the consent of the Environment Court,". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (3) was substituted, as from 7 July 1993, by section 216(2) 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.

Subclause (1) was amended, as from 7 July 1993, by section 217(1) Resource Management Amendment Act 1993 (1993 No 65) by inserting the expression "or variations under clause 16A".

Subclause (2) was substituted, as from 7 July 1993, by section 217(2) Resource Management Amendment Act 1993 (1993 No 65).

Subclause (3) was amended, as from 7 July 1993, by section 217(3) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "proposed regional coastal plan" for the words "regional coastal plan".

Subclause (4) was inserted, as from 7 July 1993, by section 217(4) 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.

1—*continued*

(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 Environment 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.

The words "Environment Court" in subclause (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" and the word "Tribunal", pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subclause (3A) was inserted, as from 7 July 1993, by section 218 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.

(3)

(4) The local authority shall provide one copy of its operative policy statement or plan without charge to—

(a) The Minister for the Environment; and

(b) The appropriate regional manager for the Ministry for the Environment; and

(c) In the case of a regional coastal plan, the Minister of Conservation and the appropriate regional conservator for the Department of Conservation; and

1—*continued*

(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; and

(g) the board of any foreshore and seabed reserve in the area.

(5) The local authority shall provide one 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).

Subclause (1) was substituted, as from 7 July 1993, by section 219 Resource Management Amendment Act 1993 (1993 No 65).

Subclause (2) was substituted, as from 7 July 1993, by section 219 Resource Management Amendment Act 1993 (1993 No 65).

Subclause (3) was repealed, as from 7 July 1993, by section 219 Resource Management Amendment Act 1993 (1993 No 65).

Subclause (4)(f) was amended, as from 17 January 2005, by section 36(4) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94) by inserting the expression "; and". *See* sections 40 to 43 of that Act.

Subclause (4)(f) was amended, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87) by omitting the words "and tribal runanga" after the word "authorities". *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (4)(g) was inserted, as from 17 January 2005, by section 36(4) Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

20A Correction of operative policy statement or plan

A local authority may amend, without further formality, an operative policy statement or plan to correct any minor errors.

Clause 20A was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

2
Requests for changes to policy statements and plans of local authorities and requests to prepare regional plans

Part 2, comprising cls 21 to 28 was substituted and 29 was inserted, as from 7 July 1993, by section 220 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 I shall apply.

Clauses 21 to 28 were substituted, as from 7 July 1993, by section 220 Resource Management Amendment Act 1993 (1993 No 65).

Subclause (3) was amended, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87) by omitting the word "regional". *See* sections 131 to 135 of that Act as to the transitional provisions.

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 significance of the actual or potential environmental effects anticipated from the implementation of the change, policy statement, or plan.

Clauses 21 to 28 were substituted, as from 7 July 1993, by section 220 Resource Management Amendment Act 1993 (1993 No 65).

Subclause (1) was amended, as from 1 August 2003, by section 92(13) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "and

2—*continued*

contain an evaluation under section 32 for any objectives, policies, rules, or other methods proposed" after the word "plan" in the last place where it appears.. *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

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.

(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

2—*continued*

(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.

Clauses 21 to 28 were substituted, as from 7 July 1993, by section 220 Resource Management Amendment Act 1993 (1993 No 65).

Subclauses (4) to (6) were inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Clauses 21 to 28 were substituted, as from 7 July 1993, by section 220 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.

(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 of this Schedule within 4 months of the local authority adopting the request; and

2—*continued*

(ii) The provisions of Part 1 of this Schedule must apply; and

(iii) The request has 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.

(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.

Clauses 21 to 28 were substituted, as from 7 July 1993, by section 220 Resource Management Amendment Act 1993 (1993 No 65).

Subclause (2) was substituted, as from 17 December 1997, by section 72 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

The words "Environment Court" in subclause (4)(b) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

2—*continued*

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.

Clauses 21 to 28 were substituted, as from 7 July 1993, by section 220 Resource Management Amendment Act 1993 (1993 No 65).

Paragraph (b)(i) was amended, as from 17 December 1997, by section 73 Resource Management Amendment Act 1997 (1997 No 104) by substituting the word "accept" for the word "adopt". *See* section 78 of that Act as to the transitional provisions.

The words "Environment Court" in clause 26(b)(ii) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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):

(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.

Clauses 21 to 28 were substituted, as from 7 July 1993, by section 220 Resource Management Amendment Act 1993 (1993 No 65).

2—*continued*

The words "Environment Court" in subclause (1) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160).

Subclause (1) was substituted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Subclause (1A) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

The words "Environment Court" in subclause (2) were substituted, as from 2 September 1996, for the words "Planning Tribunal" pursuant to section 6(2)(a) 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.

(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,

2—*continued*

unless the local authority determines to proceed with the request itself.

Clauses 21 to 28 were substituted, as from 7 July 1993, by section 220 Resource Management Amendment Act 1993 (1993 No 65).

29 Procedure under this Part

(1) Except as provided in subclauses (2) to (9), Part 1 of this Schedule, with all necessary modifications, shall apply to any plan or change requested under this Part and accepted under clause 25(2)(b).

(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.

(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.

Clause 29 was inserted, as from 7 July 1993, by section 220 Resource Management Amendment Act 1993 (1993 No 65).

Subclauses (6), (7) and (8) were amended, as from 2 September 1996, pursuant to section 6(2)(a) Resource Management Amendment Act 1996 (1996 No 160)

2—*continued*

by substituting the words "Environment Court" for the words "Planning Tribunal".

Subclause (6) was amended, as from 1 August 2003, by section 92(14)(a) Resource Management Amendment Act 2003 (2003 No 23) by substituting the word "appeal" for the word "refer". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subclause (7) was amended, as from 1 August 2003, by section 92(14)(b) Resource Management Amendment Act 2003 (2003 No 23) by substituting the word "appealed" for the word "referred". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Subclause (8) was amended, as from 1 August 2003, by section 92(14)(c) Resource Management Amendment Act 2003 (2003 No 23) by substituting the word "appealed" for the word "referred". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

3
Incorporation of documents by reference in plans and proposed plans

Part 3 (comprising cls 30 to 35) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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—*continued*

(3) Material incorporated by reference in a plan or proposed plan has legal effect as part of the plan or proposed plan.

Part 3 (comprising cls 30 to 35) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Part 3 (comprising cls 30 to 35) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Part 3 (comprising cls 30 to 35) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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

3—*continued*

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.

Part 3 (comprising cls 30 to 35) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

(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

3—*continued*

(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.

(5) A failure to comply with this clause does not invalidate a plan or proposed plan that incorporates material by reference.

Part 3 (comprising cls 30 to 35) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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—

3—*continued*

(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:

(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.

Part 3 (comprising cls 30 to 35) was inserted, as from 10 August 2005, by section 129(1) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

Schedule 1AA

s 43G

Incorporation of documents by reference in national environmental standards, national policy statements, and New Zealand coastal policy statements

Schedule 1AA was inserted, as from 10 August 2005, by section 130 Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

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.

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.

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.

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 1A

s 64

Preparation and change of regional coastal plans providing for aquaculture activities

Schedule 1A was inserted, as from 1 January 2005, by section 33 Resource Management Amendment Act (No 2) 2004 (2004 No 103).

1 Preparation and change of regional coastal plans providing 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.

2 Assessment of undue adverse effects on fishing

Before notifying a proposed regional coastal plan under clause 5 or clause 26 of Schedule 1, a regional council must request the chief executive of the Ministry of Fisheries to make an aquaculture decision.

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, and any other stocks or species not subject to the quota management system.

(5) A determination or reservation does not form part of the plan.

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.

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 Schedule 1 until the period provided for in section 186J of the Fisheries Act 1996 has expired.

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.

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 2

Sections 62, 67, and 75

Matters that may be provided for in policy statements and plans

[Repealed]

Part 1: clause 1(d) was amended, as from 7 July 1993, by section 221(1) Resource Management Amendment Act 1993 (1993 No 65) by omitting the word "adverse".

Part 1: clause 2 was amended, as from 7 July 1993, by section 221(2)(a) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "the coastal marine area" for the words "a coastal marine area or water covering the area".

Part 1: clause 2(d) was amended, as from 7 July 1993, by section 221(2)(b) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "the water" for the words "water covering the area in conjunction with adjacent territorial authorities".

Part 1: clause 2(ea) was inserted, as from 20 August 1998, by section 28 Resource Management Amendment Act 1994 (1994 No 105). *See* clause 2 Resource Management Amendment Act 1994 Commencement Order 1998 (SR 1998/209).

Part 1: clause 2(f) was amended, as from 7 July 1993, by section 221(2)(c) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "the water" for the words "any water covering the area".

Part 1: clause 5 was substituted, as from 17 December 1997, by section 74 Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions, and section 79 of that Act as to the financial transitional provisions.

Part 1: clause 7 was inserted, as from 7 July 1993, by section 222 Resource Management Amendment Act 1993 (1993 No 65).

Part 2: clause 1 was amended, as from 7 July 1993, by section 223 Resource Management Amendment Act 1993 (1993 No 65) by substituting subclauses (a)(i) and (ii).

Part 2: clause 3 was substituted, as from 17 December 1997, by section 75 Resource Management Amendment Act 1997 (1997 No 104). *See* section 79 of that Act as to the financial transitional provisions.

Part 2: clause 4 was repealed, as from 7 July 1993, by section 224 Resource Management Amendment Act 1993 (1993 No 65).

Part 2: clause 5 was substituted, as from 7 July 1993, by section 224 Resource Management Amendment Act 1993 (1993 No 65).

Schedule 2 was repealed, as from 1 August 2003, by section 93 Resource Management Amendment Act 2003 (2003 No 23). *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Schedule 3

Section 69

Water quality classes

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.

Schedule 4

Section 88(6)(b)

Assessment of effects on the environment

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)

(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.

Clause 1 was amended, as from 1 August 2003, by section 94(a) Resource Management Amendment Act 2003 (2003 No 23) by substituting the expression "88" for the expression "88(6)(b)". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraph (c) was repealed, as from 7 July 1993, by section 225 Resource Management Amendment Act 1993 (1993 No 65).

Paragraph (h) was amended, as from 1 August 2003, by section 94(b) Resource Management Amendment Act 2003 (2003 No 23) by inserting the words "if any," after the word "undertaken,". *See* sections 109 to 113 of that Act as to the transitional and savings provisions.

Paragraph (h) was substituted, as from 10 August 2005, by section 129(2) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

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.

Clause 1AA was inserted, as from 10 August 2005, by section 129(3) Resource Management Amendment Act 2005 (2005 No 87). *See* sections 131 to 135 of that Act as to the transitional provisions.

1A Matters that must be included in an assessment of effects on the environment

An assessment of effects on the environment for the purposes of section 88 must include, in a case where a recognised customary activity is, or is likely to be, adversely affected, a description of possible alternative locations or methods for the proposed activity (unless written approval for that activity is given by the holder of the customary rights order).

Clause 1A was inserted, as from 17 January 2005, by section 37 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

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.

Schedule 5

Section 350

Provisions applying in respect of the Hazards Control Commission

[Repealed]

Schedule 5 was repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

Schedule 6

Section 361(1)

Enactments repealed

- 1889, No 19(L)—The Kumara Sludge Channel Act 1889.
- 1889, No 15(L)—The Waitohi River Bed Act 1889.
- 1908, No 169—The Sand Drift Act 1908. (RS Vol 11, p 315.)
- 1910, No 28(L)—The Woodville Borough Drainage Empowering Act 1910.
- 1910, No 37(L)—The Waihou and Ohinemuri Rivers Improvement Act 1910. (Reprinted 1931, Vol 4, p 582.)
- 1915, No 68—The Reserves and Other Lands Disposal and Public Bodies Empowering Act 1915: Section 110. (RS Vol 11, p 551.)
- 1917, No 26—The Reserves and Other Lands Disposal and Public Bodies Empowering Act 1917: Section 2. (RS Vol 11, p 552.)
- 1919, No 22(L)—The Hawke's Bay Rivers Act 1919.
- 1920, No 3(L)—The Hawke's Bay Rivers Amendment Act 1920.
- 1930, No 16(L)—The Hawke's Bay Rivers Amendment Act 1930.
- 1932-33, No 9(L)—The Hawke's Bay Rivers Amendment Act 1932-33.
- 1933, No 15(L)—The Hawke's Bay Rivers Amendment Act 1933.
- 1934-35, No 3(L)—The Hawke's Bay Rivers Amendment Act 1934-35.
- 1936, No 9(L)—The Hawke's Bay Rivers Amendment Act 1936.
- 1945, No 40—The Statutes Amendment Act 1945: Section 89. (RS Vol 11, p 554.)
- 1957, No 12—The Atomic Energy Amendment Act 1957: Sections 3(1), 4, 7(2), 9, 13. (RS Vol 1, p 199.)
- 1957, No 51—The Geothermal Energy Amendment Act 1957. (Reprinted 1975, Vol 3, p 2035.)
- 1958, No 101—The Waihou and Ohinemuri Rivers Improvement Amendment Act 1958.

- 1959, No 100—The Iron and Steel Industry Act 1959. (RS Vol 9, p 199.)
- 1965, No 130—The Iron and Steel Industry Amendment Act 1965. (RS Vol 9, p 187.)
- 1966, No 50—The Geothermal Energy Amendment Act 1966. (Reprinted 1975, Vol 3, p 2035.)
- 1967, No 135—The Water and Soil Conservation Act 1967. (RS Vol 17, p 783.)
- 1968, No 117—The Water and Soil Conservation Amendment Act 1968. (RS Vol 17, p 856.)
- 1969, No 114—The Water and Soil Conservation Amendment Act 1969. (RS Vol 17, p 857.)
- 1971, No 24—The Water and Soil Conservation Amendment Act 1971. (RS Vol 17, p 857.)
- 1971, No 154—The Water and Soil Conservation Amendment Act (No 2) 1971. (RS Vol 17, p 873.)
- 1972, No 31—The Clean Air Act 1972. (RS Vol 24, p 127.)
- 1972, No 114—The Water and Soil Conservation Amendment Act 1972. (RS Vol 17, p 876.)
- 1973, No 24—The Water and Soil Conservation Amendment Act 1973. (RS Vol 17, p 877.)
- 1973, No 64—The Geothermal Energy Amendment Act 1973. (Reprinted 1975, Vol 3, p 2036.)
- 1974, No 137—The Water and Soil Conservation Amendment Act 1974. (RS Vol 17, p 887.)
- 1975, No 51—The Marine Farming Amendment Act 1975. (RS Vol 22, p 747.)
- 1976, No 147—The Marine Farming Amendment Act 1976. (RS Vol 22, p 748.)
- 1976, No 164—The Water and Soil Conservation Amendment Act 1976. (RS Vol 17, p 889.)
- 1977, No 89—The Geothermal Energy Amendment Act 1977.
- 1977, No 121—The Town and Country Planning Act 1977. (RS Vol 16, p 521.)
- 1977, No 188—The Marine Farming Amendment Act 1977. (RS Vol 22, p 749.)

- 1980, No 153—The Water and Soil Conservation Amendment Act 1980. (RS Vol 17, p 889.)
- 1980, No 167—The Town and Country Planning Amendment Act 1980. (RS Vol 16, p 650.)
- 1981, No 72—The Harbours Amendment Act 1981.
- 1981, No 123—The Water and Soil Conservation Amendment Act 1981. (RS Vol 17, p 890.)
- 1982, No 20—The Clutha Development (Clyde Dam) Empowering Act 1982.
- 1982, No 31—The Clean Air Amendment Act 1982. (RS Vol 24, p 192.)
- 1982, No 140—The Noise Control Act 1982.
- 1983, No 17—The Marine Farming Amendment Act 1983. (RS Vol 22, p 749.)
- 1983, No 149—The Town and Country Planning Amendment Act 1983. (RS Vol 16, p 653.)
- 1983, No 151—The Water and Soil Conservation Amendment Act 1983. (RS Vol 17, p 891.)
- 1986, No 79—The Clean Air Amendment Act 1986. (RS Vol 24, p 195.)
- 1987, No 22—The Clean Air Amendment Act 1987. (RS Vol 24, p 196.)
- 1987, No 36—The Marine Farming Amendment Act 1987. (RS Vol 22, p 750.)
- 1987, No 69—The Town and Country Planning Amendment Act 1987.
- 1987, No 84—The Noise Control Amendment Act 1987.
- 1987, No 203—The Water and Soil Conservation Amendment Act 1987.
- 1988, No 44—The Town and Country Planning Amendment Act 1988.
- 1988, No 47—The Water and Soil Conservation Amendment Act 1988.
- 1988, No 56—The Clutha Development (Clyde Dam) Empowering Amendment Act 1988.
- 1988, No 180—The Clean Air Amendment Act 1988. (RS Vol 24, p 199.)

- 1988, No 214—The Town and Country Planning Amendment Act (No 2) 1988.
- 1990, No 17—The Water and Soil Conservation Amendment Act 1990.

Schedule 7

Section 361(2)

Regulations and orders revoked

Title	Statutory Regulations Serial Number
The Soil Conservation Regulations 1945.....	1945/32
The Water and Soil Conservation Regulations 1968.....	1968/181
The Water and Soil Conservation Regulations 1968, Amendment No 1	1970/56
The Clean Air (Licensing) Regulations 1973	1973/303
The Clean Air Act (Smoke) Regulations 1975	1975/52
The Clean Air Zone (Christchurch) Order 1977.....	1977/172
The Water and Soil Conservation Regulations 1968, Amendment No 2	1978/36
The Town and Country Planning Regulations 1978.....	1978/130
The Clean Air Zone (Christchurch) Order 1977, Amendment No 1	1979/258
The Clean Air Zone (Christchurch) Order 1977, Amendment No 2	1981/70
The Town and Country Planning Regulations 1978, Amendment No 1	1981/104

Title	Statutory Regulations Serial Number
The Clean Air Zone (Christchurch) Order 1977, Amendment No 3	1982/247
The Clean Air Act Schedules Order 1982	1982/278
The Clean Air (Licensing) Regulations 1973, Amendment No 1	1983/45
The Clean Air Zones (Canterbury Region) Order 1984	1984/81
The Clean Air (Licensing) Regulations 1973, Amendment No 2	1987/17
The Clean Air Zone (Christchurch) Order 1977, Amendment No 4	1988/97
The Clean Air Zones (Canterbury Region) Order 1984, Amendment No 1	1988/98
The Town and Country Planning Regulations 1978, Amendment No 2	1988/191

Schedule 8

Section 362

1
Enactments amended

Enactment	Amendment
1908, No 96—The Land Drainage Act	By inserting after section 2 the following section:

1—*continued*

Enactment	Amendment
1908 (RS Vol 6, p 641)	"**2A Relationship to Resource Management Act 1991** Nothing in this Act shall derogate from the Resource Management Act 1991. By repealing sections 50 (as amended by section 4 of the Land Drainage Amendment Act 1952 and section 8 of the Land Drainage Amendment Act 1956) and 50A (as inserted by section 2(1) of the Land Drainage Amendment Act 1964).
1908, No 165—The River Boards Act 1908 (RS Vol 10, p 765)	By inserting the following proviso after paragraphs (d) and (f) of section 76: "Provided that any such power shall be exercised subject to the Resource Management Act 1991. By repealing subsection (1) of section 86, and substituting the following subsection: "(1) Nothing in this Act shall authorise any River Board to commence or construct any river works or place any pile or other structure in, on, over, through, or across tidal lands or tidal water without complying with the Resource Management Act 1991.

1—*continued*

Enactment	Amendment
1936, No 7(P)—The Whakatane Paper Mills, Limited, Water-Supply Empowering Act 1936	By repealing sections 4 and 5. By repealing section 19. By inserting, after section 24, the following section: "**24A** Exercise of ancillary rights following repeal of sections 4 and 5 of this Act Every right, power or privilege conferred by sections 7, 9, or 10 of this Act shall continue to be exercisable by the Company in connection with the exercise of the water permits that are, by virtue of section 386 of the Resource Management Act 1991, deemed to replace the rights in relation to the river conferred by sections 4 and 5 of this Act,— "(a) In the same manner, and to the same extent, as those rights, powers, and privileges were exercisable before the repeal of sections 4 and 5 of this Act; and "(b) Subject to the requirement that the Company shall, in exercising those rights, powers, and privileges, comply in all

1—*continued*

Enactment	Amendment
	respects with the Resource Management Act 1991.
1940, No 13—The Reserves and Other Lands Disposal Act 1940	By repealing sections 18 and 28.
1941, No 12—The Soil Conservation and Rivers Control Act 1941 (RS Vol 17, p 607)	By inserting after section 10 the following section: "**10A** Relationship to Resource Management Act 1991—Notwithstanding section 10 of this Act, nothing in this Act shall derogate from the provisions of sections 176 to 182 of the Harbours Act 1950 or the Resource Management Act 1991. By repealing subsections (1) (as substituted by section 6(1) of the Soil Conservation and Rivers Control Amendment Act 1988), (2), and (3) of sections 16 and 19 (as amended by section 9(1) to (3) of the Soil Conservation and Rivers Control Amendment Act 1988). By repealing subsection (2) of section 20 (as amended by section 10 of the Soil Conservation and Rivers Control

1—*continued*

Enactment	Amendment
	Amendment Act 1988), and substituting the following subsection: "(2) The Board may consent in writing to access onto or over land comprised in a soil conservation reserve for the purpose of exercising a mining permit issued under Part I of the Crown Minerals Act 1991. By repealing sections 26 and 27 (as amended by section 13 of the Soil Conservation and Rivers Control Amendment Act 1988.) By omitting from section 33A(1) (as substituted by section 18 of the Soil Conservation and Rivers Control Amendment Act 1988), the words "or the Water and Soil Conservation Act 1967". By omitting from section 33B(1)(a) (as substituted by section 19 of the Soil Conservation and Rivers Control Amendment Act 1988), the words "or the Water and Soil Conservation Act 1967". By omitting from section 33B(1)(c) (as substituted by section 20 of the Soil Conservation and Rivers Control Amendment Act 1988), the words "or under section 34 or section 36 of the Soil Conservation and Rivers Control Amendment Act 1959". By repealing subsection (1) of section 126, and substituting the following subsection: "(1) It shall be a function of every Catchment Board to minimise and

1—*continued*

Enactment	Amendment
	prevent damage within its district by floods and erosion. By repealing subsection (2A) of section 126 (as inserted by section 29 of the Soil Conservation and Rivers Control Amendment Act 1988.) By repealing sections 127 and 130 (as amended by section 2(3) of the Soil Conservation and Rivers Control Amendment Act 1948). By repealing section 144 (as amended by section 34(a) of the Soil Conservation and Rivers Control Amendment Act 1988). By repealing section 149 (as amended and substituted by section 13 of the Soil Conservation and Rivers Control Amendment Act 1948, sections 27 and 28 of the Soil Conservation and Rivers Control Amendment Act 1959, section 43(1)(c) of the Soil Conservation and Rivers Control Amendment Act 1988, and section 2(d) of the Soil Conservation and Rivers Control Amendment Act (No 2) 1988). By repealing subsection (1) of section 150 (as amended by section 4(2) of the Soil Conservation and Rivers Control Amendment Act 1946, section 7(1) of the Soil Conservation and Rivers Control Amendment Act 1972, section 69(4) of the Forest and Rural Fires Act 1977, and section 43(1)(c) of the Soil Conservation and Rivers Control Amendment Act 1988). By repealing subsection (2) of section 150.

1—*continued*

Enactment	Amendment
	By repealing section 150A (as inserted by section 29(1) of the Soil Conservation and Rivers Control Amendment Act 1959). By repealing sections 151 and 152 (as amended by section 15(a) and (b) of the Soil Conservation and Rivers Control Amendment Act 1983 and section 43 of the Soil Conservation and Rivers Control Amendment Act 1988). By repealing section 152A (as inserted by section 30 of the Soil Conservation and Rivers Control Amendment Act 1959). By repealing section 155 (as amended by section 14 of the Soil Conservation and Rivers Control Amendment Act 1948, sections 2(1) and 21(2) of the Soil Conservation and Rivers Control Amendment Act 1952, section 14(b) of the Soil Conservation and Rivers Control Amendment Act 1962, section 18 of the Soil Conservation and Rivers Control Amendment Act 1983, and section 43(2)(b) and (c) of the Soil Conservation and Rivers Control Amendment Act 1988). By repealing section 168.
1945, No 41—The Atomic Energy Act 1945 (RS Vol 1, p 189)	By repealing sections 4A and 4B. By inserting in section 5(1), after the word "impose", the words "for the purpose of public health and safety". By repealing sections 5A, 8, 9, 10, and 11.

1—*continued*

Enactment	Amendment
1948, No 64—The Land Act 1948 (RS Vol 23, p 559)	By omitting from paragraph (f) of the definition of the term **Crown land** in section 2 the words "Part XX of the Local Government Act 1974 (as enacted by section 2 of the Local Government Amendment Act 1978)", and substituting the words "Part X of the Resource Management Act 1991". By repealing section 50 (as amended by section 2 of the Land Amendment Act 1953). By omitting from section 60(1), (3), and (5) the words "water rights". By repealing section 60A. By repealing subsection (5) of section 66A (as amended by section 2 of the Land Amendment Act 1975), and substituting the following subsection: "(5) Every recreation permit shall be deemed to be issued subject to the condition that the holder will comply with all local authority bylaws, rules, regulations, and requisitions, and with the provisions of the Resource Management Act 1991. By omitting from paragraph (b) of section 82(3A) (as inserted by section 3(5) of the Local Government Amendment Act 1978) the words "pursuant to any of the provisions of subsections (3) to (5) of section 306 of the Local Government Act 1974 (as enacted by section 2 of the Local Government Amendment Act 1978)", and substituting the words

1—*continued*

Enactment	Amendment
	"pursuant to sections 238 or 239 of the Resource Management Act 1991." By inserting in section 93(1), after the word "sub-divide", the words "in accordance with Part X of the Resource Management Act 1991". By repealing section 93(3), and substituting the following subsection: "(3) The Board's approval of a subdivision may be given subject to the condition that the lessee or licensee shall pay to the Crown the value as determined by the Board of any land that vests as road on the deposit of a survey plan pursuant to section 238 of the Resource Management Act 1991. By omitting from section 165(1) the words "Unless the Board considers that a mining licence under the Mining Act 1971 should be obtained, the removal", and substituting the word "Removal". By repealing subsection (2) of section 165. By adding to section 165 the following subsection: "(6A) Nothing in this section shall derogate from the provisions of the Resource Management Act 1991 or the Crown Minerals Act 1991.

1—*continued*

Enactment	Amendment
1950, No 34—The Harbours Act 1950 (RS Vol 2, p 551)	By repealing the definition of **Director-General** in section 2(1) (as inserted by section 65(1) of the Conservation Act 1987). By repealing the definition of **Harbour Board** or **Board** in section 2(1), and substituting the following definition: "**Harbour Board** or **Board** means any Harbour Board constituted under this Act, or any local authority responsible for the powers, functions, or duties specified in this Act By repealing the definition of **Port boundaries** (as inserted by section 65(1) of the Conservation Act 1987). By inserting in section 2 in their appropriate alphabetical order the following definitions: "**Minister** means the Minister of Transport By repealing section 2(1A) (as inserted by section 65(1) of the Conservation Act 1987). By repealing section 5A(1) (as inserted by section 65(1) of the Conservation Act 1987). By inserting, after section 7, the following section: "**7A Regional councils to have powers of Harbour Boards in certain circumstances** "(1) Every regional council shall, in relation to any harbour, navigable river or lake, estuary or arm of the sea in its region (except those

1—*continued*

Enactment	Amendment
	waters to which the Lake Taupo Regulations 1976 apply) in respect of which there is no Harbour Board, have all the powers, functions, duties, rights, exemptions, privileges, and authorities that are conferred by this Act on Harbour Boards in respect of harbours. "(2) Nothing in this section shall oblige any regional council to exercise or perform all or any of the powers, functions, duties, rights, exemptions, privileges, or authorities conferred or imposed on it by this section. By repealing section 8 (as substituted by section 8(3) of the Local Government Amendment Act 1979). By repealing section 8A (as inserted by section 6 of the Harbours Amendment Act 1961 and amended by section 2 of the Harbours Amendment Act 1962, sections 2 and 16(2) of the Harbours Amendment Act 1968, section 5 of the Harbours Amendment Act 1977, section 80(1) of the National Parks Act 1980, section 2 of the Harbours Amendment Act 1981, section 65(1) of the Conservation Act 1987, and section 3 of the Harbours Amendment Act (No 2) 1988). By repealing section 9 (as amended by section 2(1) of the Harbours Amendment Act 1956 and section 8(1) of the Harbours Amendment Act 1959).

1—*continued*

Enactment	Amendment
	By repealing sections 10, 11, and 12 (as amended by section 2(1) of the Harbours Amendment Act 1956). By repealing section 13. By omitting subparagraphs (i) and (iv) of section 143B(3)(a), and substituting the following subparagraph: "(i) The Resource Management Act 1991: By repealing sections 145, 147, and 148 (as amended by section 65(1) of the Conservation Act 1987). By repealing section 146A (as substituted and amended by section 4 of the Harbours Amendment Act 1980, section 65(1) of the Conservation Act 1987, section 2 of the Harbours Amendment Act 1988, and section 2 of the Harbours Amendment Act (No 5) 1988). By repealing section 149. By repealing sections 150 and 151. By omitting from section 154(1) the words "low-water mark", and substituting the words "mean high-water springs". By repealing section 156 (as amended by sections 7(1) and 8(1) of the Harbours Amendment Act 1959, and section 29(1) and (2) of the Harbours Amendment Act 1977). By repealing sections 157 and 158 (as amended by section 8(1) of the Harbours Amendment Act 1959). By repealing section 159 (as substituted by section 30(1) of the Harbours Amendment Act 1977). By repealing section 160.

1—*continued*

Enactment	Amendment
	By repealing section 161 (as amended by section 8(1) of the Harbours Amendment Act 1959, section 31 of the Harbours Amendment Act 1977, and section 23 of the Harbours Amendment Act (No 2) 1988). By repealing section 162 (as substituted by section 32(1) of the Harbours Amendment Act 1977 and as amended by section 65(1) of the Conservation Act 1987). By repealing section 163 (as substituted by section 32(1) of the Harbours Amendment Act 1977). By repealing section 165 (as substituted by section 9(1) of the Harbours Amendment Act 1961 and amended by section 9 of the Harbours Amendment Act 1964, section 9(1) of the Harbours Amendment Act 1965, section 12(1) of the Harbours Amendment Act 1968, section 33 of the Harbours Amendment Act 1977, section 3 of the Harbours Amendment Act 1981, section 65(1) of the Conservation Act 1987, section 11(1) of the State-Owned Enterprises Amendment Act 1987, and section 24 of the Harbours Amendment Act (No 2) 1988. By repealing sections 166, 167, 169, and 170. By repealing section 171 (as amended by section 13 of the Harbours Amendment Act 1968 and section 65(1) of the Conservation Act 1987). By repealing section 175 (as amended by section 37 of the Harbours Amendment Act 1977, section 65(1) of the

1—*continued*

Enactment	Amendment
	Conservation Act 1987, and section 11(1) of the State-Owned Enterprises Amendment Act 1987). By repealing section 175A (as amended by section 38 of the Harbours Amendment Act 1977). By repealing section 175B (as amended by section 38 of the Harbours Amendment Act 1977, section 81(1) of the Survey Act 1986, and section 65(1) of the Conservation Act 1987). By repealing section 175C (as substituted by section 13(1) of the Harbours Amendment Act 1968). By repealing section 175D (as inserted by section 39 of the Harbours Amendment Act 1977). By repealing sections 176, 177, 177A, 177B, and 177C. By repealing section 178 (as amended by section 12 of the Harbours Amendment Act 1964, section 41 of the Harbours Amendment Act 1977, and section 65(1) of the Conservation Act 1987). By repealing section 178A (as inserted by section 3 of the Harbours Amendment Act (No 2) 1974 and amended by section 42 of the Harbours Amendment Act 1977). By repealing paragraphs (7), (34), (34A), (36), (38), and (42) of section 232. By repealing section 232A (as inserted by section 16(1) of the Harbours Amendment Act 1968 and amended by section 65 of the Harbours Amendment Act 1977

1—*continued*

Enactment	Amendment
	and section 65(1) of the Conservation Act 1987). By repealing subsection (1) of section 234 (as amended by section 65(1) of the Harbours Amendment Act 1977), and substituting the following subsection: "(1) Bylaws made under section 232 of this Act— "(a) Shall not be repugnant to the provisions of this Act, or the General Harbour Regulations made hereunder, or to the Resource Management Act 1991 or any other Act; and "(b) Shall be read subject to the Resource Management Act 1991 and any regional coastal plan or regional plan; and "(c) Shall not come into operation until after a copy under the seal of the Board has been sent to, and the receipt thereof has been acknowledged by, the Minister. By inserting in paragraph (i) of section 241(1), after the word "rules", the words "regarding safety and good navigation". By repealing section 241B (as inserted by section 71 of the Harbours Amendment Act 1977). By omitting from subsection (2) of section 241C (as amended by section 65(1) of the Conservation Act 1987) the words "after consultation with the

1—*continued*

Enactment	Amendment
	Minister of Conservation" wherever they appear. By repealing section 242 (as amended by section 16 of the Harbours Amendment Act 1964, section 11(1) of the Harbours Amendment Act 1965, section 19(1), (2), and (3) of the Harbours Amendment Act 1968, s 72(1), (2), and (3) of the Harbours Amendment Act 1977, and section 2 of the Harbours Amendment Act 1989), and section 243. By repealing section 244 (as substituted by section 7(2) of the Harbours Amendment Act 1965 and section 73 of the Harbours Amendment Act 1977.) By repealing section 244A (as inserted by section 2 of the Harbours Amendment Act 1975 and amended by section 65(1) of the Conservation Act 1987).
1952, No 34—The Land Settlement Promotion and Land Acquisition Act 1952 (RS Vol 3, p 139)	By repealing subparagraphs (i), (ii), (iii) of section 35B(1)(f) (as substituted by section 2 of the Land Settlement Promotion and Land Acquisition Amendment Act 1969), and substituting the following subparagraphs: "(i) Any land of 4000 square metres or over in area which is provided for under any operative regional plan or proposed or operative district plan under the Resource Management Act 1991 as a reserve, or as a public park, or for recreation

1—*continued*

Enactment	Amendment
	purposes, or as private open space, or which is subject to a heritage requirement or order, or any proposed such purpose; or "(ii) Any land of 2 hectares or over in area for which agricultural use is a permitted, provisional, or discretionary activity under any such proposed or operative district scheme. By repealing paragraph (a) of section 35H(3) (as inserted by section 3(1) of the Land Settlement Promotion and Land Acquisition Amendment Act 1969), and substituting the following paragraph: "(a) That the land is not provided as a reserve or as a public park, or for recreation purposes, or as private open space or any proposed such purpose or is not subject to a heritage order under any operative regional plan or proposed or operative district plan under the Resource Management Act 1991; and. By repealing paragraph (b) of section 35H(3) (as inserted by section 3(1) of the Land Settlement Promotion and Land Acquisition Amendment Act 1969), and substituting the following paragraph: "(b) That where the land is not provided for in a regional or district plan for any of the purposes specified in paragraph (a) of this subsection, the land is unlikely to be required for any such purpose. For

1—*continued*

Enactment	Amendment
	the purposes of this paragraph, the Tribunal may accept as sufficient evidence that the land is likely to be used for any purpose specified in paragraph (a) of this subsection, a certificate by a local authority within the meaning of the Resource Management Act 1991 that any land comprised in the transaction, although not provided for in the plan for that purpose, is the subject of a requirement for a heritage order under section 189 of that Act or may be required for any of the other purposes specified in paragraph (a) of this subsection; and.
1952, No 51—The Property Law Act 1952 (RS Vol 22, p 773)	By repealing subparagraph (i) of section 104D(1)(c) (as inserted by section 4 of the Property Law Amendment Act 1975), and substituting the following subparagraph: "(i) Designated for a public work in an operative or proposed district plan under the Resource Management Act 1991. By omitting from section 129(8) (as substituted by section 5 of the Property Law Amendment Act 1957) the words "or the Mining Act 1971", and substituting the words "or Part I of the Crown Minerals Act 1991". By omitting from section 129B(1)(c) (as inserted by section 12(2) of the Property

1—*continued*

Enactment	Amendment
	Law Amendment Act 1975) the words "of the Town and Country Planning Act 1977", and substituting the words "of the Resource Management Act 1991". By omitting from section 129B(12) (as inserted by section 12(2) of the Property Law Amendment Act 1975) the words "or the Mining Act 1971", and substituting the words "or Part I of the Crown Minerals Act 1991". By repealing section 129B(15) (as inserted by section 12(2) of the Property Law Amendment Act 1975), and substituting the following subsection: "(15) Nothing in Part X of the Resource Management Act 1991 shall apply to any transfer, exchange, or other disposition of any land made in pursuance of an order of the Court made under this section. By repealing section 129C(2)(a) (as inserted by section 12(2) of the Property Law Amendment Act 1975), and substituting the following paragraph: "(a) Any land which may be used for residential purposes under rules in the relevant proposed or operative district plan. By omitting from the proviso to section 129C(5) (as inserted by section 12(2) of the Property Law Amendment Act 1975) the words "by a local authority under any of the provisions of the Town and Country Planning Act 1977 or the Local Government Act 1974", and substituting the

1—*continued*

Enactment	Amendment
	words "made by a heritage protection authority under the provisions of Part VIII of the Resource Management Act 1991".
1952, No 52—The Land Transfer Act 1952 (RS Vol 22, p 531)	By repealing paragraph (b) of section 90C(1) (as substituted by section 3 of the Land Transfer Amendment Act 1961), and substituting the following paragraph: "The creation of the easement is a condition on which the subdivision has been consented to pursuant to section 220 of the Resource Management Act 1991.
1954, No 82—The Tasman Pulp and Paper Company Enabling Act 1954	By repealing section 5 (as substituted by section 5 of the Tasman Pulp and Paper Company Enabling Amendment Act 1986), and substituting the following section: "**5 Authorisations deemed to be permits under the Resource Management Act 1991** Notwithstanding anything in the Resource Management Act 1991 or in any other enactment— "(a) The authorisations conferred by section 3 of this Act to take water from the river; and "(b) The authorisations conferred by section 4 of this

1—*continued*

Enactment	Amendment
	Act to discharge trade wastes into the river— in force and exercisable by the company immediately before the commencement of this section shall be deemed to be water permits or discharge permits (as the case may be) granted under the Resource Management Act 1991, and the provisions of that Act, so far as they are applicable and with all necessary modifications, shall apply accordingly in respect of those authorisations, the conditions to which they were subject immediately before the commencement of this section, and any conditions imposed by the Board under section 4(3) of this Act (including any direction given under section 5D(3) of this Act). By repealing section 5C (as so substituted). By repealing subsection (1) of section 5D (as so substituted), and substituting the following subsection: "(1) Notwithstanding the provisions of section 4(3) of this Act but subject to subsections (2) to (6) of this section, the company, in respect of the discharge authorised by section 4 of this Act, need not comply with— "(a) Any condition, restriction, or prohibition imposed

1—*continued*

Enactment	Amendment
	under this Act or the Resource Management Act 1991; or "(b) Any regulations or plan in force under that Act— requiring that the natural colour and clarity of the river not be changed to a conspicuous extent. By repealing subsection (4) of section 5D (as so substituted), and substituting the following subsection: "(4) The company may appeal to the Planning Tribunal against any determination or direction of the Board under subsection (2) or subsection (3) of this section; and the provisions of the Resource Management Act 1991, with the necessary modifications, shall apply in respect of the appeal. By repealing subsection (1) of section 5E (as so substituted), and substituting the following subsection: "(1) In this section, **waste** means waste as defined in section 2(1) of the Water and Soil Conservation Act 1967 before its repeal by the Resource Management Act 1991. By inserting in section 5E, after subsection (2), the following subsection: "(2A) Every such right or authorisation shall be deemed to be a discharge permit granted under the Resource Management Act 1991 subject to such conditions imposed by the

1—*continued*

Enactment	Amendment
	Board under subsection (7) of this section. By repealing subsection (7) of section 5E, and substituting the following subsection: "(7) Any direction given under subsection (4) of this section shall be deemed to be a condition of the discharge permit. By repealing subsection (8) of section 5E (as so substituted). By repealing section 5F (as so substituted).
1955, No 51—The Housing Act 1955 (RS Vol 7, p 297)	By inserting the following section after section 3: "**3A Relationship to Resource Management Act 1991** Nothing in this Part of this Act shall derogate from any of the provisions of the Resource Management Act 1991. By repealing section 10. By omitting from section 11(2) the words "Subject to the Town and Country Planning Act 1977", and substituting the words "Subject to the Resource Management Act 1991". By repealing section 12.

1—*continued*

Enactment	Amendment
1956, No 63—The Local Authorities Loans Act 1956 (Reprinted 1989, RS Vol 3, p 385)	By repealing paragraphs (a) and (b) of section 18.
1959, No 48—The Soil Conservation and Rivers Control Amendment Act 1959 (RS Vol 17, p 759)	By repealing section 33. By repealing section 34 (as amended by sections 48, 49(1) and (2), and 52 of the Soil Conservation and Rivers Control Amendment Act 1988). By repealing section 35 (as amended by sections 48 and 49(1), (2), (3), and (4) of the Soil Conservation and Rivers Control Amendment Act 1988). By repealing section 35 (as amended by sections 48 and 49(1), (2), (3), and (4) of the Soil Conservation and Rivers Control Amendment Act 1988). By repealing section 36 (as amended by section 50(1) of the Soil Conservation and Rivers Control Amendment Act 1988 and as repealed and substituted by section 50(2) of the Soil Conservation and Rivers Control Amendment Act 1988). By repealing section 37 (as amended by section 51 of the Soil Conservation and Rivers Control Amendment Act 1988). By repealing section 38.

1—*continued*

Enactment	Amendment
1962, No 20—The Forestry Encouragement Act 1962 (RS Vol 17, p 213)	By omitting from the definition of **lease** in section 2 the words "a mining privilege within the meaning of the Mining Act 1971, and a coal mining lease or coal mining right under the Coal Mines Act 1979.", and substituting the words "including a permit within the meaning of Part I of the Crown Minerals Act 1991".
1966, No 51—The Airport Authorities Act 1966 (RS Vol 17, p 1)	By repealing paragraph (a) of section 3D (as inserted by section 4 of the Airport Authorities Amendment 1986).
1969, No 141—The Public Bodies Leases Act 1969 (RS Vol 18, p 621)	By repealing section 21.
1971, No 29—The Marine Farming Act 1971 (RS Vol 22, p 695)	By repealing sections 3 to 9. By repealing sections 11 to 14A. By repealing sections 21 to 31. By inserting, after section 42A, the following section: "**42B Application of certain sections to coastal permits under Resource Management Act 1991** For the purposes of sections 32(a), 33, 36, 37, 38, 41, 42, 42A, 48(1)(c) to (k), and 48(2) of this Act, any reference to a leased area or a licensed area includes a reference to any area—

1—*continued*

Enactment	Amendment
	"(a) Which is part of the coastal marine area as defined by the Resource Management Act 1991; and "(b) In respect of which a coastal permit has been granted under that Act for any marine farming activity. By omitting from section 47(1) the words "the Coal Mines Act 1979, the Mining Act 1926, the Mining Act 1971, the Petroleum Act 1937, or the Iron and Steel Industry Act 1959", and substituting the words "the Crown Minerals Act 1991." By omitting from section 47(1) the words "any of those Acts", and substituting the words "that Act". By inserting in section 50(1), after the figure "1963,", the words "the Resource Management Act 1991".
1971, No 51—The Stamp and Cheque Duties Act 1971	By omitting such of Schedule 3 as relates to the Mining Act 1971.

1—*continued*

Enactment	Amendment
1972, No 15—The Unit Titles Act 1972	By inserting, after section 2, the following section: "**2A Relationship to Resource Management Act 1991** "(1) Except as provided in subsections (2) and (3) of this section, nothing in this Act shall derogate from the provisions of the Resource Management Act 1991. "(2) Nothing in section 11 or Part X of the Resource Management Act 1991 shall apply to sections 45, 46, 47, 48, 49, or Part IV of this Act. "(3) Nothing in section 11 or Part X of the Resource Management Act 1991 shall apply to a deposit of a stage unit plan or a complete unit plan in accordance with the Unit Titles Amendment Act 1979. By omitting from paragraph (c) of section 5A(1) (as inserted by section 14(1) of the Unit Titles Amendment Act 1979) the words "Town and Country Planning Act 1977", and substituting the words "Resource Management Act 1991". By omitting from subsection (2) of section 5A (as so inserted) the words "Town and Country Planning Act 1977", and substituting the words "Resource Management Act 1991".

1—*continued*

Enactment	Amendment
1973, No 107—The Lake Wanaka Preservation Act 1973 (RS Vol 24, p 363)	By omitting from section 6 the words "Water and Soil Conservation Act 1967", and substituting the words "Resource Management Act 1991". By omitting from section 8 the words "Water and Soil Conservation Act 1967", and substituting the words "Resource Management Act 1991". By repealing section 11 (as substituted by section 3 of the Lake Wanaka Preservation Amendment Act (No 2) 1988), and substituting the following section: "**11 Harbour works on lake restricted** No regional council shall grant a resource consent under the Resource Management Act 1991 authorising any activity in relation to the lake that is referred to in section 13 or section 14 of that Act without first— "(a) Seeking the advice of the Guardians of Lake Wanaka on the proposed activity concerned, and considering all advice received from them within a reasonable time of its being sought; and "(b) Having regard to the purposes of this Act.

1—*continued*

Enactment	Amendment
1974, No 66—The Local Government Act 1974 (RS Vol 20, p 1)	By repealing in section 2 the definitions of **District scheme**, **operative**, and **proposed district schemes**, and substituting the following definition: "**District plan**, **operative** in relation to a district plan, and **proposed plan** have the same meaning as in section 2 of the Resource Management Act 1991 By repealing in section 2 the definition of **Planning Tribunal**, and substituting the following definition: "**Planning Tribunal** means the Planning Tribunal as defined in the Resource Management Act 1991 By repealing Part 20 of the Act. By omitting from section 315 (as enacted by section 2(1) of the Local Government Amendment Act 1978) the definition of **scheme plan**. By omitting from section 315 (as enacted by section 2(1) of the Local Government Amendment Act 1978) the definition of **Survey plan**, and substituting the following definition: "**Survey plan** has the same meaning as in the Resource Management Act 1991 By omitting from paragraph (e) of section 319 (as enacted by section 2(1) of the Local Government Amendment Act 1978) the words "district scheme", and substituting the words "district plan". By omitting from paragraph (b) of section 320(2) (as enacted by section 2(1) of the Local Government Amendment Act

1—*continued*

Enactment	Amendment
	1978) the words "approved by the Council under Part XX of this Act", and substituting the words "approved by the Council under Part X of the Resource Management Act 1991". By omitting from subsection (1) of section 321 (as enacted by section 2(1) of the Local Government Amendment Act 1978) the words "on a scheme plan", and substituting the words "within land to be subdivided pursuant to the Resource Management Act 1991". By adding to section 321(3)(ca) of the Local Government Act 1974 (as inserted by section 2(3) of the Local Government Amendment Act (No 3) 1991) the following subparagraph: "(iii) Is of a kind referred to in section 218(1)(a)(iii) of the Resource Management Act 1991 and the council resolves, or the district plan provides, that subsection (1) of this section does not apply; or By repealing sections 321A (as substituted by section 30(1) of the Local Government Amendment Act 1985) and 322 (as enacted by section 2(1) of the Local Government Amendment Act 1978 and amended by section 39(1) of the Local Government Amendment Act 1985). By adding to section 325 (as enacted by section 2 of the Local Government Amendment Act 1978 and amended by section 8(1) of the Local Government

1—*continued*

Enactment	Amendment
	Amendment Act 1979) the following subsection: "(3) This section and the Eleventh Schedule shall expire on the 1st day of January 1993. By repealing section 327 and 328 (as both enacted by section 2 of the Local Government Amendment Act 1978). By inserting, as section 327A, the following section: "**327A Building-line restrictions** Where a building-line restriction has been imposed under this Act or any former enactment, and the council subsequently determines that the building-line restriction be cancelled, the council shall send notice of cancellation to the District Land Registrar or Registrar of Deeds, as the case may require, who shall amend his or her records accordingly. By omitting from section 331(1) (as enacted by section 2 of the Local Government Amendment Act 1978 and amended by section 39(1) of the Local Government Amendment Act 1985), the words "Without limiting the generality of its powers in relation to any scheme plan". By omitting from section 336(8) (as substituted by section 8(1) of the Local Government Amendment Act 1979) the words "and the appeal shall be made and determined by that Tribunal in the manner prescribed by the Town and Country

1—*continued*

Enactment	Amendment
	Planning Act 1977 and the regulations under that Act", and substituting the words "and the appeal shall be made and determined by that Tribunal in the manner prescribed by the Resource Management Act 1991 and any regulations made under that Act". By omitting from section 340(1) (as enacted by section 2 of the Local Government Amendment Act 1978) the words "Where a building-line restriction has been imposed under this Act or any other Act in relation to the whole or any part of any road, then notwithstanding anything to the contrary in this Act, but subject to the Town and Country Planning Act 1977", and substituting the words "Subject to the Resource Management Act 1991,". By omitting the first proviso to section 341(1) (as enacted by section 2 of the Local Government Amendment Act 1978), and substituting the following proviso: "Provided that no such lease shall be granted for any purpose that would be in contravention of any provision of the Resource Management Act 1991. By repealing subsection (3) of section 345 (as enacted by section 2 of the Local Government Amendment Act 1978 and amended by section 65(1) of the Conservation Act 1987), and substituting the following subsections: "(3) Where any road or any part of a road along the mark of mean high

1—*continued*

Enactment	Amendment
	water springs of the sea, or along the bank of any river with an average width of 3 metres or more, or the margin of any lake with an area of 8 hectares or more is stopped, there shall become vested in the council as an esplanade reserve (as defined in section 2(1) of the Resource Management Act 1991) for the purposes specified in section 229 of the Resource Management Act 1991— "(a) A strip of land forming part of the land that ceases to be road not less than 20 metres wide along the mark of mean high water springs of the sea, or along the bank of any river or the margin of any lake (as the case may be); or "(b) The full width of the land which ceases to be road— whichever is the lesser. "(4) The obligation under subsection (3) of this section to set aside a strip of land not less than 20 metres in width as an esplanade reserve is subject to any rule included in a district plan under section 77 of the Resource Management Act 1991. "(5) On the issue of any certificate of title for land which has become vested in the council as an esplanade reserve under subsection

1—*continued*

Enactment	Amendment
	(3) of this section, the District Land Registrar shall enter thereon a memorandum that the land is subject to that subsection. By omitting from paragraph (b) of section 346G(2) (as enacted by section 2 of the Local Government Amendment Act 1978 and as amended by section 7(1) of the Local Government Amendment Act 1979) the words "and the objection shall be made and determined by the Planning Tribunal in the manner prescribed by the Town and Country Planning Act 1977 and the regulations under that Act", and substituting the words "and the objection shall be made and determined by the Planning Tribunal in the manner prescribed by the Resource Management Act 1991 and the regulations under that Act." By omitting from section 346G(3) (as enacted by section 2 of the Local Government Amendment Act 1978) the words "Subject to section 162 of the Town and Country Planning Act 1977", and substituting the words "Subject to section 299 of the Resource Management Act 1991". By omitting from section 347 (as enacted by section 2 of the Local Government Amendment Act 1978) the words "Subject to the Town and Country Planning Act 1977", and substituting the words "Subject to the Resource Management Act 1991". By omitting from section 347 (as enacted by section 2 of the Local

1—*continued*

Enactment	Amendment
	Government Amendment Act 1978) the word "widths". By repealing section 502 (as enacted by section 2 of the Local Government Amendment Act 1979), and substituting the following section: "**502 This Part to be subject to Resource Management Act 1991** Nothing in this Part of this Act shall derogate from the provisions of the Resource Management Act 1991. By repealing section 594ZN (as inserted by section 34 of the Local Government Amendment Act (No 2) 1989) and section 549ZZK (as inserted by section 2 of the Local Government Amendment Act (No 4) 1989). By inserting in subsection (5) of section 710 (as inserted by section 89(1) of the Dog Control and Hydatids Act 1982), after the words "Hydatids Act 1982", the words "and any enforcement officer acting under any power conferred by the Resource Management Act 1991". By inserting in clause 1 of Schedule 10 (as inserted by section 3(1) of the Local Government Amendment Act 1978), after the words "together with an explanation as to", the words "why the road is to be stopped and". By adding to clause 1 of Schedule 10 the words "The plan shall separately show any area of esplanade reserve which will become vested in the council under section 345(3) of this Act."

1—*continued*

Enactment	Amendment
	By repealing clause 6 of Schedule 10 (as so inserted), and substituting the following clause: "**6** The Planning Tribunal shall consider the district plan, the plan of the road proposed to be stopped, the council's explanation under clause 1 of this Schedule, and any objection made thereto by any person, and confirm, modify, or reverse the decision of the council which shall be final and conclusive on all questions.
1975, No 42—The Fire Service Act 1975	By omitting from subsection (7) of section 4 (as substituted by section 3 of the Fire Service Amendment Act 1978 and amended by section 247(4) of the Public Works Act 1981) the words "and the Town and Country Planning Act 1977".

1—*continued*

Enactment	Amendment
1977, No 52—The Forest and Rural Fires Act 1977 (RS Vol 23, p 407)	By repealing subsection (3) of section 19, and substituting the following subsection: "(3) Every fire control measure carried out in respect of any land, structure, or vegetation shall have regard to any relevant national or regional policy statements, regional or district plans, or regulations made under the Resource Management Act 1991
1977, No 66—The Reserves Act 1977	By repealing the proviso to subsection (2) of section 14, and substituting the following proviso: "Provided that such a notice of intention shall not be necessary where a district plan makes provision for the use of the land as a reserve or the land is designated as a proposed reserve under an operative district plan under the Resource Management Act 1991. By inserting in subsection (2A) of section 16 (as substituted by section 3 of the Reserves Amendment Act 1983) the following paragraph: "(g) Created under Part X of the Resource Management Act 1991— By repealing paragraph (b) of section 16(5) (as substituted by section 4(1) of the Reserves Amendment Act 1979 and amended by section 3 of the Reserves Amendment Act 1983), and substituting the following paragraph:

1—*continued*

Enactment	Amendment
	"(b) The intended use of the land is in conformity with the relevant operative district plan under the Resource Management Act 1991. By inserting in the second proviso to section 23(2)(a) (as inserted by section 7 of the Reserves Amendment Act 1979), after the words "or any local purpose reserve for esplanade purposes created under the said Part 25 or Part 2 or under Part 20 of the Local Government Amendment Act 1978", the words "or under Part X of the Resource Management Act 1991". By inserting in section 24(7), after the words "Local Government Amendment Act 1978", the words "or as a condition of any resource consent under the Resource Management Act 1991". By repealing paragraphs (a) and (b) of section 24A(3) (as inserted by section 10 of the Reserves Amendment Act 1979), and substituting the following paragraphs: "(a) The operative district plan in force under the Resource Management Act 1991 for the district in which the reserve is situated: "(b) Any resource consent applying to the reserve granted by the council in accordance with Part VI of that Act.

1—*continued*

Enactment	Amendment
	By repealing the proviso to paragraph (i) of section 53(1), and substituting the following proviso: "Provided that any such power in relation to water-courses shall be exercised subject to the Resource Management Act 1991:. By omitting from paragraph (j) of section 53(1) the words "and subject to the Harbours Act 1950", and substituting the words "and subject to the Resource Management Act 1991". By repealing the proviso to paragraph (d) of section 55(1), and substituting the following proviso: "Provided that any such power in relation to water-courses shall be exercised subject to the Resource Management Act 1991. By omitting from paragraph (f) of section 55(2) the words "and subject to the Harbours Act 1950", and substituting the words "and subject to the Resource Management Act 1991." By repealing paragraph (b) of section 56(3) (as inserted by section 18(2) of the Reserves Amendment Act 1979), and substituting the following paragraph: "(b) Is made following the granting of any appropriate resource consent in accordance with Part VI of the Resource Management Act 1991. By repealing paragraph (b) of section 58A(3) (as inserted by section 19(1) of the Reserves Amendment Act 1979 and amended by the Reserves Amendment

1—*continued*

Enactment	Amendment
	Act 1983), and substituting the following paragraph: "(b) Is made following the granting of any appropriate resource consent granted by the council in accordance with Part VI of the Resource Management Act 1991.
1978, No 43—The Local Government Amendment Act 1978.	By omitting such of Schedule 2 as relates to the Mining Act 1971.
1980, No 66—The National Parks Act 1980	By repealing subsection (5) of section 7. By repealing subsection (6) of section 7, and substituting the following subsection: "(6) No foreshore shall be declared to be a park or to be added to any park, except on the joint recommendation of the Minister and the Minister of Transport, and, where the foreshore is under the control of a regional council under the Resource Management Act 1991, except with the consent of that body. By repealing section 78.

1—*continued*

Enactment	Amendment
1981, No 35—The Public Works Act 1981	By omitting from the definition of **Planning Tribunal** in section 2 the words "under the Town and Country Planning Act 1977", and substituting the words "under the Resource Management Act 1991". By omitting from section 24(14) (as substituted by section 38(1) of the Town and Country Planning Amendment Act 1983) the words "Subject to sections 162 and 162H of the Town and Country Planning Act 1977", and substituting the words "Subject to sections 299 and 308 of the Resource Management Act 1991". By omitting from section 25 (as amended by section 38(2) of the Town and Country Planning Amendment Act 1983) the words "Notwithstanding anything in section 134 of the Town and Country Planning Act 1977". By repealing subsection (8) of section 27, and substituting the following subsection: "(8) Nothing in this section shall derogate from the provisions of Part III of the Resource Management Act 1991. By repealing sections 36 (as amended by section 10(1) and (2) of the Public Works Amendment Act 1988), 37, 38, and 39, and substituting the following section: "**36A Transitional procedures for defining middle line** Where a notice has been issued in the *Gazette* defining the middle line of a road or railway line under

1—*continued*

Enactment	Amendment
	sections 36 to 39 of this Act, that notice shall continue to have effect until its expiry or until the fifth anniversary of the date of commencement of the Resource Management Act 1991, whichever date first occurs, as if sections 36 to 39 of this Act had not been repealed. By repealing subsection (3) of section 46, and substituting the following subsection: "(3) Nothing in this section shall derogate from the provisions of the Resource Management Act 1991. By repealing paragraphs (a) and (b) of the definition of the term **notified** in section 59 (as amended by section 2(7) of the Public Works Amendment Act (No 2) 1987 and section 17(2) of the Public Works Amendment Act 1988), and substituting the following paragraphs: "(a) Made the subject of a requirement by a Minister of the Crown, a local authority, or a network utility operator under section 168 of the Resource Management Act 1991, or by a heritage protection authority under section 189 of that Act, or by any such body or person under clause 4 of Part I of the First Schedule to that Act or under the corresponding provisions of any former enactment; or "(b) Designated for a public work or a project or work, or made the subject of a heritage order, included in an operative or proposed district

1—*continued*

Enactment	Amendment
	plan under the Resource Management Act 1991; or By repealing subsection (1) of section 71, and substituting the following subsection: "(1) For the purposes of this section, the term **relevant date** means— "(a) The date on which notification was given under section 18(1)(a) of this Act; or "(b) The date on which a requirement was notified under section 167 of the Resource Management Act 1991,— as the case may be. By omitting subsection (9) of section 71, and substituting the following subsection: "(9) Every such appeal shall be made and determined by the Planning Tribunal in the manner prescribed by the Resource Management Act 1991 and any regulations made under that Act. By inserting in section 111A(1) (as inserted by section (2) of the Public Works Amendment Act (No 3) 1987), after paragraph (b), the following paragraph: "(ba) A network utility operator within the meaning of section 166 of the Resource Management Act 1991 which has approval as a requiring authority under section 167 of that Act; or By inserting in section 111A(2) (as inserted by section 2 of the Public Works Amendment Act (No 3) 1987), after the

1—*continued*

Enactment	Amendment
	words "application for any right,", the word "designation,". By repealing section 118, and substituting the following section: "**118 Application of other Acts to stopped roads** "(1) Notwithstanding section 117 of this Act, where any road or any portion of a road along the mark of mean high water springs of the sea, or along the bank of any river, or the margin of any lake (as the case may be) is stopped under section 116 of this Act— "(a) Section 345(3) of the Local Government Act 1974 (relating to esplanade reserves) shall apply to the land comprising the road or portion of the road so stopped if that land was formerly a road vested in a local authority (including a state highway vested in a local authority): "(b) Part IVA of the Conservation Act 1987 (relating to marginal strips) shall apply to the land comprising the road or portion of the road so stopped if that land was formerly a Government road or a state highway or other road vested in the Crown. "(2) For the purpose of subsection (1) of this section, **lake** and **river** have

1—*continued*

Enactment	Amendment
	the same meaning as in section 2(1) of the Resource Management Act 1991. By omitting from paragraphs (e), (f), and (g) of section 166 the words "Subject to compliance with the Water and Soil Conservation Act 1967", where they appear, and substituting the words "Subject to compliance with the Resource Management Act 1991". By repealing section 185A (as inserted by section 47 of the Public Works Amendment Act 1988). By repealing section 186. By repealing section 187 (as amended by section 9 of the Airport Authorities Amendment Act 1986, section 2(7) of the Public Works Amendment Act (No 2) 1987, and section 48 of the Public Works Amendment Act 1988). By repealing section 187A (as inserted by section 11(1) of the State-Owned Enterprises Amendment Act 1987). By repealing sections 188 and 189 (both amended by section 9 of the Airport Authorities Amendment Act 1986 and section 49 of the Public Works Amendment Act 1988). By omitting from subsection (3) of section 190 the words "The Water and Soil Conservation Act 1967". and substituting the words "The Resource Management Act 1991". By repealing subsection (9) of section 191 and substituting the following subsection:

1—*continued*

Enactment	Amendment
	"(9) Nothing in this section shall derogate from the provisions of the Resource Management Act 1991 By omitting from subsection (1) of section 218 (as amended by section 66 of the Public Works Amendment Act 1988), the words "the Water and Soil Conservation Act 1967", and substituting the words "the Resource Management Act 1991". By inserting in section 224(20), after the words "any party to the agreement", the words "which is a requiring authority within the meaning of the Resource Management Act 1991". By omitting from section 224(20) the words "Part VI of the Town and Country Planning Act 1977", and substituting the words "Part VIII of the Resource Management Act 1991". By repealing section 235.
1981, No 119—The New Zealand Railways Corporation Act 1981	By inserting after section 3 the following section: "**3A Relationship to Resource Management Act 1991** The Corporation shall not be an instrument of the Executive Government of New Zealand for the purposes of the Resource Management Act 1991. By adding to section 31 the following subsection: "(9) Nothing in this section shall derogate from the provisions of Part III

1—*continued*

Enactment	Amendment
	of the Resource Management Act 1991.
1983, No 14—The Fisheries Act 1983	By omitting from the definition of **Planning Tribunal** in section 2 the words "established under section 128 of the Town and Country Planning Act 1977", and substituting the words "constituted under the Resource Management Act 1991". By omitting from section 54H (as inserted by section 74 of the Maori Fisheries Act 1989) the words "and the provisions of subsections (2) to (11) of section 162 and of section 162A of the Town and Country Planning Act 1977 shall, with any necessary modifications, apply in respect of the report or recommendation in the same manner as they apply in respect of a determination of the Planning Tribunal under the Town and Country Planning Act 1977", and substituting the words "and the provisions of sections 299 and 308 of the Resource Management Act 1991 shall, with any necessary modifications, apply in respect of the report or recommendation in the same manner as they apply in respect of a decision of the Planning Tribunal under the Resource Management Act 1991". By omitting from section 84(5) the words "water right granted or otherwise authorised pursuant to the Water and Soil Conservation Act 1967 or any other Act, and

1—*continued*

Enactment	Amendment
	for this purpose it shall be a sufficient defence to produce a certificate to that effect from the Regional Water Board in the area of which the right was purported to be granted or otherwise authorised", and substituting the words "discharge permit granted under the Resource Management Act 1991 or was a permitted activity in the relevant regional plan under that Act, and for this purpose it shall be a sufficient defence to produce a certificate to that effect from the regional council in the area of which the permit was purported to be granted or activity otherwise permitted".
1983, No 38—The Synthetic Fuels Plant (Effluent Disposal) Empowering Act 1983	By omitting from section 3 the words "Water and Soil Conservation Act 1967", and substituting the words "Resource Management Act 1991". By repealing section 5 (as substituted by section 4 of the National Development Act Repeal Act 1986), and substituting the following section: "**5 Application of Resource Management Act 1991** Subject to the provisions of this Act, the right granted by section 3(1) of this Act shall have the same force and effect as if it had been granted pursuant to the Resource Management Act 1991; and the provisions of that Act (other than sections 128, 129, 130, 131, and 132), so far as is practicable and

1—*continued*

Enactment	Amendment
	with all necessary modifications, shall apply accordingly in respect of that right and of the terms, conditions, restrictions, and prohibitions set out in the Schedule to this Act.
1986, No 122—The National Development Act Repeal Act 1986	By repealing section 4.
1986, No 127—The Environment Act 1986	By repealing paragraph (c) in the definition of **consent** in section 2, and substituting the following paragraph: "(c) Any operative regional plan or district plan or proposed plan under the Resource Management Act 1991. By repealing the definition of **contaminant** in section 2, and substituting the following definition: "**Contaminant**, means any substance (including gases, liquids, solids, and micro-organisms) or energy (including radioactivity and electromagnetic radiation but excluding noise) or heat, that either by itself or in combination with the same, similar, or other substances, energy, or heat— "(a) Changes or has the potential, when discharged into water, to change the physical, chemical, or biological condition of that water; or "(b) Changes or has the potential, when discharged onto or into land or into

1—*continued*

Enactment	Amendment
	air, to change the physical, chemical, or biological condition of the land or air onto or into which it is discharged: By inserting into paragraph (a) of the definition of **environment** in section 2, after the word "parts", the words "including people and communities". By repealing paragraph (c) in the definition of **environment** in section 2, and substituting the following paragraphs: "(c) Those physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes; and "(d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters: By omitting from the definition of **pollution** in section 2, the words "includes air pollution within the meaning of the Clean Air Act 1972, and". By omitting from the Schedule to the Act the following items: "The Clean Air Act 1972 "The Geothermal Energy Act 1953 "The Noise Control Act 1982 "The Soil Conservation and Rivers Control Act 1941

1—*continued*

Enactment	Amendment
	"The Town and Country Planning Act 1977 "The Water and Soil Conservation Act 1967 and substituting the following items: "The Resource Management Act 1991 "Section 70AA of the Transport Act 1962.
1986, No 124—The State-Owned Enterprises Act 1986	By repealing subsections (9), (9A), and (9B) of section 23 (as substituted by section 6(2) of the State-Owned Enterprises Amendment Act 1987 and amended by section 2 of the State-Owned Enterprises Amendment Act 1988). By omitting from section 27D(5) (as inserted by section 10(1) of the Treaty of Waitangi (State Enterprises) Act 1988) the words "within the meaning of section 271 or section 272 of the Local Government Act 1974", and substituting the words "within the meaning of the Resource Management Act 1991". By repealing paragraph (e) of section 28(1). By omitting from paragraph (e) of the definition of **assets** in section 29(1) the words "planning rights, water rights, and clean air licences", and substituting the words "and any kind of consent granted under the Resource Management Act 1991,". By repealing Schedule 5.

1—*continued*

Enactment	Amendment
1987, No 65—The Conservation Act 1987	By omitting from section 23 the words "pursuant to the Water and Soil Conservation Act 1967", and substituting the words "under the Resource Management Act 1991". By repealing subsection (5) of section 24 (as inserted by section 15 of the Conservation Law Reform Act 1990), and substituting the following subsection: "(5) Nothing in this section shall limit or affect section 230 of the Resource Management Act 1991. By omitting from section 39(6) (as amended by section 22 of the Conservation Law Reform Act 1990) the words "water right granted or otherwise authorised pursuant to the Water and Soil Conservation Act 1967 or any other Act, and for this purpose it shall be a sufficient defence to produce a certificate to that effect from the Regional Water Board in the area of which the right was purported to be granted or otherwise authorised", and substituting the words "discharge permit granted under the Resource Management Act 1991 or was a permitted activity in the relevant regional plan under that Act, and for this purpose it shall be a sufficient defence to produce a certificate to that effect from the regional council in the area of which the permit was purported to be granted or activity otherwise permitted".

1—*continued*

Enactment	Amendment
1987, No 174—The Local Government Official Information and Meetings Act 1987	By repealing subsection (2) of section 2. By inserting in section 7, after paragraph (b), the following paragraph: "(ba) In the case only of an application for a resource consent, or water conservation order, or a requirement for a designation or heritage order, under the Resource Management Act 1991, to avoid serious offence to tikanga Maori, or to avoid the disclosure of the location of waahi tapu; or By repealing paragraph (b) of section 48(2). By inserting in Part 1 of Schedule 1, after the item "City Councils", the following item: "Community boards, boards of inquiry, public bodies, special tribunals, or any person given authority to conduct hearings under sections 33, 34, 117, 146, or 202 of the Resource Management Act 1991.
1988, No 97—The Rating Powers Act 1988	
1989, No 44—The Public Finance Act 1989	These amendments have been incorporated in the reprinted Public Finance Act 1989 (1993 RS Vol 31, p 726).

1—*continued*

Enactment	Amendment
1989, No 75—The Transit New Zealand Act 1989	By omitting from the definition of **Planning Tribunal** in section 43 the words "Town and Country Planning Act 1977", and substituting the words "Resource Management Act 1991". By repealing section 45. By omitting from section 48(8) the words "Water and Soil Conservation Act 1967", and substituting the words "Resource Management Act 1991". By omitting from section 61(10) the words "Water and Soil Conservation Act 1967", and substituting the words "Resource Management Act 1991". By repealing section 72. By omitting from paragraphs (b) and (d) of section 73 the words "middle line", and substituting the word "route". By omitting from paragraphs (e) and (f) of section 73 the words "Water and Soil Conservation Act 1967", and substituting the words "Resource Management Act 1991".

1—*continued*

Enactment	Amendment
1989, No 140—The Ministry of of Energy (Abolition) Act 1989	By omitting from section 115(5) the expression "$1,500" in both places where it occurs, and substituting in each case the expression "$250". By omitting from section 15(5)(a) the expression "$15,000", and substituting the expression "$16,500". By omitting from section 15(5)(b) the expression "$20,000", and substituting the expression "$22,000". By omitting from section 16(4)(a) the expression "6,000", and substituting the expression "$6,600". By omitting from section 16(4)(b) the expression "$15,000", and substituting the expression "$16,500". By repealing section 17(2), and substituting the following subsection: "(2) On or before the 31st day of January and the 31st day of July in each year, every holder of a prospecting licence shall pay to the Secretary, in respect of each prospecting licence held,— "(a) A levy of $1,000, or such lesser amount as may be prescribed, for the immediately preceding period of 6 months ended with the 31st day of December or the 30th day of June, as the case may be, if the prospecting licence was worked during that period; or

1—*continued*

Enactment	Amendment
	"(b) A levy of $250, or such lesser amount as may be prescribed, for the immediately preceding period of 6 months ended with the 31st day of December or the 30th day of June, as the case may be, if the prospecting licence was not worked during that period. By omitting from section 18(4) the expression "$3,000", and substituting the expression "$3,300". By repealing subsections (1) and (2) of section 20, and substituting the following subsections: "(1) In this section, unless the context otherwise requires, expressions defined in the Geothermal Energy Act 1953 or in the Geothermal Energy Regulations 1961 shall have the meanings so defined. "(2) Every owner of a bore which exceeds, or in the the opinion of the Secretary is likely to exceed, a temperature of 70ºC Celsius at any depth of the bore (other than a bore which has been properly abandoned) shall pay to the Secretary, within 30 days after receipt of an invoice from the Secretary, an annual levy as provided by this section. By omitting from subsection (3) of section 20 the word "user", and substituting

1—*continued*

Enactment	Amendment
	the words "owner to whom subsection (2) of this section applies". By omitting from the said subsection (3) the words "from which geothermal energy is used". By omitting from subsections (5), (6), and (8) of section 20 the word "user" wherever it occurs, and substituting in each case the word "owner". By omitting from subsection (8) of section 20 the word "users" in both places where it occurs, and substituting in each case the words "owners". By omitting from section 21(2) the words "holder of a pipeline authorisation", and substituting the words "owner of a pipeline". By omitting from section 21(3) the word "holder", and substituting the word "owner". By omitting from section 21(3) the word "authorisation", and substituting the words "pipeline authorisation in force in respect of the pipeline". By repealing section 21(5), and substituting the following subsection: "(5) If any single pipeline is owned by 2 or more persons, each owner shall be jointly and severally liable with the other owner or owners to pay the levy under this section in respect of each pipeline authorisation. By repealing section 30, and substituting the following section:

1—*continued*

Enactment	Amendment
	"**30 Payment into Departmental Bank Account** All money received by the Secretary under this Part of this Act shall be paid into the Departmental Bank Account of the responsible department of State. By omitting so much of Schedule 1 as relates to sections 4, 4A, and 4B of the Atomic Energy Act 1945. By omitting so much of Schedule 1 as relates to section 8 of the Geothermal Energy Act 1953. By omitting so much of Schedule 1 as relates to the Iron and Steel Industry Act 1959.
1990, No 31 The Conservation Law Reform Act 1990	By omitting from section 22(6) the words "water right granted or otherwise authorised pursuant to the Water and Soil Conservation Act 1967 or any other Act, and for this purpose it shall be a sufficient defence to produce a certificate to that effect from the Regional Water Board in the area of which the right was purported to be granted or otherwise authorised", and substituting the words "discharge permit granted under the Resource Management Act 1991 or was a permitted activity in the relevant regional plan under that Act, and for this purpose it shall be a sufficient defence to produce a certificate to that effect from the regional council in the area

1—*continued*

Enactment	Amendment
	of which the permit was purported to be granted or activity otherwise permitted". By omitting from section 122(1) the words "Part XX of the Local Government Act 1974 (as inserted by section 2 of the Local Government Amendment Act 1978)", and substituting the words "section 11 and Part X of the Resource Management Act 1991". By omitting from section 122(2) the words "or development". By omitting so much of the Schedule as relates to the Town and Country Planning Act 1977.
1990, No 52—The Irrigation Schemes Act 1990	By inserting in section 6(2), before the words "Any such mining privilege", the words "Except as otherwise provided in section 413(3) of the Resource Management Act 1991,". By inserting in section 7(3), before the words "A right", the words "Except as otherwise provided in section 386(2) or section 386(3) of the Resource Management Act 1991,". By repealing section 12, and substituting the following section: "**12 Section 11 and Part X of Resource Management Act 1991 and Part XXI of Local Government Act 1974 not to apply** Section 11 and Part X of the Resource Management Act 1991 and

1—*continued*

Enactment	Amendment
	Part XXI of the Local Government Act 1974 shall not apply to or in respect of the transfer of any land or interest in land pursuant to this Part of this Act nor to any subdivision required in respect of any such transfer. By repealing section 13, and substituting the following section: "**13 Activity permitted as of right** For the purposes of section 375(1)(a)(iii) of the Resource Management Act 1991 and for the avoidance of doubt, where any irrigation scheme is sold or otherwise disposed of under this Part of this Act, any use for irrigation purposes of the land upon which the irrigation scheme is situated shall be deemed to be a permitted activity within the meaning of that Act, and section 375 of that Act shall apply accordingly. By inserting in section 15(1), after the words "applied thereto", the words "and section 386 of the Resource Management Act 1991 shall apply accordingly".
1990, No 105—The New Zealand Railways Corporation Restructuring Act 1990	By inserting, after section 12(2), the following subsection: "(3) Section 11(1) of the Resource Management Act 1991 does not apply in respect of the granting of a lease to a railway operator

1—*continued*

Enactment	Amendment
	under subsection (1) of this section unless the land in respect of which the lease is granted is used, or is intended to be used, solely or principally for car parking, or for administration or residential purposes, or for any purpose that is not connected with the operation of a railway.

Schedule 8, Part I: items relating to the Ombudsmen Act 1975, the Official Information Act 1982, and the definition of the term hazardous substance in section 2 of the Environment Act 1986 were repealed, as from 2 July 2001, by section 149 Hazardous Substances and New Organisms Act 1996 (1996 No 30). *See* Parts 11 to 16 of that Act (comprising sections 151 to 259) as to the transitional provisions. *See* clause 2 Hazardous Substances and New Organisms Act Commencement Order (No 2) 2001 (SR 2001/171).

Schedule 8, Part 1: the item relating to Airport Authorities Act 1966 was amended, as from 23 July 1993, by section 2(2)(b) Airport Authorities Amendment Act 1993 (1993 No 72) by repealing reference s 6(8).

Schedule 8, Part 1: the item relating to section 31 Conservation Act 1987 (1987 No 65) was omitted, as from 1 July 1996, by section 15(2)(b) Conservation Amendment Act 1996 (1996 No 1).

Schedule 8, Part 1: the item relating to sections 6, 10 and 10B Fisheries Act 1983 was omitted, as from 1 October 1995, by section 9(4)(c) Fisheries Amendment Act 1995 (1995 No 51).

Schedule 8, Part 1: the definition of the term Secretary in the Harbours Act 1950 was repealed, as from 20 August 1993, by section 20(1) Maritime Transport Act 1993 (1993 No 89).

Schedule 8, Part I: the item relating to the Harbours Act 1950 was amended, as from 7 July 1993, by section 226(1) Resource Management Amendment Act 1993 (1993 No 65) by substituting the reference "By repealing sections 176, 177, 177A, 177B, and 177C" for the reference "176, 177, and 177A of the Harbours Act 1950".

Schedule 8, Part 1: the item relating to the Harbours Act 1950 was amended, as from 7 July 1993, by section 226(2) Resource Management Amendment Act 1993 (1993 No 65) by substituting the reference "By repealing section 241B (as inserted by section 71 of the Harbours Amendment Act 1977)" for the reference "section 241B of the Harbours Act 1950".

Schedule 8, Part 1: the item relating to the Income Tax Act 1976 was omitted, as from 1 April 1995, by section YB 3(1) Income Tax Act 1994 (1994 No 164). *See* section YB 5 of that Act as to the transitional provisions.

1—*continued*

Schedule 8, Part 1: the item relating to section 90A(9) of the Land Transfer Act 1952 was repealed, as from 1 July 2003, by section 266 Local Government Act 2002 (2002 No 84).

Schedule 8, Part 1: the item relating to the Local Government Act 1974 was amended, as from 7 July 1993, by section 226(4) Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "34(2)" for the expression "34(4)". Part 1, Schedule 8 relating to the Local Government Act 1974 was amended, as from 7 July 1993, by section 226(5) Resource Management Act 1993 (1993 No 65) by inserting the item in brackets. Part 1, Schedule 8 relating to the Local Government Act 1974 was amended, as from 7 July 1993, by section 226(6) Resource Management Amendment Act 1993 (1993 No 65) by inserting the item in brackets.

Schedule 8, Part 1: the item relating to section 37P(5) Local Government Act 1974 was inserted, as from 17 December 1997, by section 76(1) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Schedule 8, Part 1: the item relating to the Local Government Act 1974 was amended, as from 7 July 1993, by section 226(7) Resource Management Amendment Act 1993 (1993 No 65) by substituting the item in brackets.

Schedule 8, Part 1: the item relating to the Local Government Act 1974 was amended, as from 1 July 1992, by section 92(2) Building Act 1991 (1991 No 150) by repealing the items relating to sections 637 and 643.

Schedule 8, Part 1: the item relating to sections 37P, 37S(1), 101ZZ, 363, 373, 398, 421, 440, 459(7), 470, 488, 498(1), 501A, 551(1), 572(2), 664B(1), 656(1), 660(1), 675(1), 680 and 684 Local Government Act 1974 was repealed, as from 1 July 2003, by section 266 Local Government Act 2002 (2002 No 84).

Schedule 8, Part 1: the item relating to the Marine Farming Act 1971 was amended, as from 7 July 1993, by section 2(2)(d) Marine Farming Amendment Act 1993 (1993 No 66) by repealing the reference to s 14F.

Schedule 8, Part 1: the item relating to "1979, No 29" was amended, as from 7 July 1993, by section 3 Marine Farming Amendment Act 1993 (1993 No 66) by inserting the references "42A" and "42B".

Schedule 8, Part 1: the item relating to the Marine Pollution Act 1974 was omitted, as from 20 August 1998, by section 481(1) Maritime Transport Act 1994 (1994 No 104). *See* clause 2 Maritime Transport Act Commencement Order 1998 (SR 1998/206). *See* section 481(2) of that Act for the savings provision relating to Orders in Council and regulations made under that Act.

Schedule 8, Part 1: the item relating to the Ministry of Energy Abolition Act 1989 (1989 No 140) was amended, as from 28 September 1993, by section 25A Ministry of Energy (Abolition) Act 1993 (1993 No 140) by repealing an item relating to s 25A.

Schedule 8, Part 1: the item relating to the Rating Powers Act 1988 was repealed, as from 1 July 2003, by section 138(1) Local Government (Rating) Act 2002 (2002 No 6). *See* section 138(2) of that Act for the savings provision that provides that the Acts and regulations continue in force to the extent necessary for the levying and collection of rates made or levied for the financial year ending on 30 June 2003 or a previous financial year.

1—*continued*

Schedule 8, Part 1: the item relating to section 24(7) Reserves Act 1977 was substituted, as from 17 December 1997, by section 76(1) Resource Management Amendment Act 1997 (1997 No 104). *See* section 78 of that Act as to the transitional provisions.

Schedule 8, Part 1: the item relating to the Tasman Pulp and Paper Company Enabling Act 1954 was amended, as from 7 July 1993, by section 226(3) Resource Management Amendment Act 1993 (1993 No 65) by substituting the words "By repealing section 5F (as so substituted)" for the words "By repealing section 5E (as so substituted)".

Schedule 8, Part 1: the item relating to the Valuation of Land Act 1951 was amended, as from 1 July 1993, by section 118(2) Historic Places Act 1993 (1993 No 38) by omitting a reference to s 25F(1) was omitted, as from 1 July 1993.

Schedule 8, Part 1: the item relating to the Valuation of Land Act 1951 was omitted, as from 1 July 1998, by section 53 Ratings Valuations Act 1998 (1998 No 69) *See* sections 55 to 63 of that Act for the savings and transitional provisions.

2
Regulations amended

Title	Amendment
The Geothermal Energy Regulations 1961 (SR 1961/124)	By revoking subclauses (1) and (2) of regulation 4. By revoking regulations 5 to 8. By revoking regulations 14, 15, 17, 18, 20, 22, and 23. By revoking the Schedule.
The Geothermal Energy Regulations 1987 (SR 1987/73)	By revoking regulations 4 to 8.

The item relating to the Geothermal Energy Regulations 1961 was amended, as from 7 July 1993, by section 227 Resource Management Amendment Act 1993 (1993 No 65) by substituting the expression "SR 1961/124" for the expression "SR 1961/126".

Schedule 9

Section 363

Special acts under which local authorities and other public bodies exercise functions, powers, and duties

- 1875, No 5(P)—The Dunedin Waterworks Extension Act 1875.
- 1891, No 19(L)—The Wanganui River Trust Act 1891.
- 1900, No 21(L)—The Hawera Borough Drainage Empowering Act 1900.
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- 1905, No 59—The Ellesmere Lands Drainage Act 1905.
- 1905, No 4(L)—The Eltham Borough Drainage and Water Supply Empowering Act 1905.
- 1905, No 37(L)—The Oxford Road District Act 1905.
- 1913, No 10(L)—The Springs County Council Reclamation and Empowering Act 1913.
- 1914, No 13(L)—The Eltham Drainage Board Act 1914.
- 1915, No 15(L)—The Springs County Council Reclamation and Empowering Act 1915.
- 1920, No 20(L)—The Taieri River Improvement Act 1920.
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- 1922, No 22(L)—The Waimakariri River Improvement Act 1922.
- 1923, No 5(L)—The Manawatu-Oroua River District Act 1923.
- 1925, No 41—The Ashley River Improvement Act 1925.
- 1926, No 19(L)—The Kaituna River District Act 1926.
- 1927, No 13(L)—The Makerua Drainage Board Loan Empowering Act 1927.
- 1928, No 16(L)—The Tumu-Kaituna Drainage Board Empowering Act 1928.

- 1929, No 23—The Taupiri Drainage and River District Act 1929.
- 1930, No 7(L)—The Dunedin Waterworks Extension Act 1930.
- 1931, No 4(L)—The South Wairarapa River Board Empowering Act 1931.
-
- 1934, No 8(L)—The Wairau River Board Empowering Act 1934.
- 1935, No 13(L)—The Southland Land Drainage Act 1935.
- 1936, No 1(L)—The Taupiri Drainage and River Board Empowering Act 1936.
- 1938, No 17(L)—The Lower Clutha River Improvement Act 1938.
- 1944, No 3(L)—The North Shore Boroughs (Auckland) Water Conservation Act 1944.
- 1944, No 8(L)—The Auckland Metropolitan Drainage Act 1944.
- 1945, No 6(L)—The Dunedin Waterworks (Silverstream Supply) Extension Act 1945.
- 1946, No 10(L)—The South Canterbury Catchment Board Act 1946.
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- 1951, No 16(L)—The Dunedin Waterworks (Taieri River Supply) Extension Act 1951.
- 1951, No 21(L)—The Christchurch District Drainage Act 1951.
- 1952, No 8(L)—The Makerua Drainage Board Empowering Act 1952.
-
- 1956, No 34—The Rangitaiki Land Drainage Act 1956.
- 1960, No 15(L)—The Auckland Metropolitan Drainage Act 1960.
- 1963, No 15(L)—The North Shore Drainage Act 1963.
- 1963, No 16(L)—The Summit Road (Canterbury) Protection Act 1963.

- 1972, No 3(L)—The Wellington Regional Water Board Act 1972.
- 1973, No 107—Lake Wanaka Preservation Act 1973.
- 1985, No 2(L)—Lakes District Waterways Authority (Shotover River) Empowering Act 1985.

Dunedin District Drainage and Sewerage Act 1900, Dunedin Waterworks Extension Act 1901, Judea Land Drainage Board Empowering Act 1921, Wairau River District Loans Act 1922, Hutt River Improvement and Reclamation Act 1922, Te Ore Ore River Board Rating Act 1934, Reporoa Drainage Board Empowering Act 1947, and Kaikoura River Board Validating Act 1953: these items were omitted, as from 1 July 2003, by section 262 and 266 Local Government Act 2002 (2002 No 84). *See* sections 273 to 314 of that Act as to the savings and transitional provisions.

Schedule 10

Sections 232(2)(a), (4)(a), 237B(2)(c), 237C(1), 338(3)(c)

Requirements for instruments creating esplanade strips and access strips

Schedule 10 was inserted, as from 7 July 1993, by section 228 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.

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 Noxious Plants Act 1978):
(h) Laying any poison or setting any snare or trap (unless acting in accordance with the Agricultural Pests Destruction Act 1967).

3 Fencing

The instrument or easement may include any fencing requirements, including gates, stiles, and the repositioning or removal of any fence.

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.

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.

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.

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 11

Sections 93, 94, and 274

Acts that include statutory acknowledgements

Schedule 11 was inserted, as from 1 October 1998, by section 226 Ngai Tahu Claims Settlement Act 1998 (1998 No 97) *See* clause 2 Ngai Tahu Claims Settlement Act Commencement Order 1998 (SR 1998/295).

Ngaa Rauru Kiitahi Claims Settlement Act 2005.

Ngai Tahu Claims Settlement Act 1998.

Ngati Awa Claims Settlement Act 2005.

Ngati Mutunga Claims Settlement Act 2006.

Ngati Ruanui Claims Settlement Act 2003.

Ngati Tama Claims Settlement Act 2003

Ngati Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005.

Pouakani Claims Settlement Act 2000.

Te Arawa Lakes Settlement Act 2006

Te Uri o Hau Claims Settlement Act 2002

Schedule 11 was amended, as from 28 June 2005, by section 57 Ngaa Rauru Kiitahi Claims Settlement Act 2005 (2005 No 84) by adding the item "Ngaa Rauru Kiitahi Claims Settlement Act 2005".

Schedule 11 was amended, as from 25 March 2005, by section 58 Ngati Awa Claims Settlement Act 2005 (2005 No 28) by adding the item "Ngati Awa Claims Settlement Act 2005".

Schedule 11 was amended, as from 22 November 2006, by section 62 Ngati Mutunga Claims Settlement Act 2006 (2006 No 61) by adding the item "Ngati Mutunga Claims Settlement Act 2006".

Schedule 11 was amended, as from 6 May 2003, by section 107 Ngati Ruanui Claims Settlement Act 2003 (2003 No 20) by adding the item "Ngati Ruanui Claims Settlement Act 2003".

Schedule 11 was amended, as from 26 November 2003, by section 71 Ngati Tama Claims Settlement Act 2003 (2003 No 126) by adding the item "Ngati Tama Claims Settlement Act 2003".

Schedule 11 was amended, as from 24 May 2005, by section 63 Ngati Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005 (2005 No 72) by adding the item "Ngati Tuwharetoa (Bay of Plenty) Claims Settlement Act 2005".

Schedule 11 was amended, as from 1 March 2001, by section 51 Pouakani Claims Settlement Act 2000 (2000 No 90) by adding the item "Pouakani Claims Settlement Act 2000".

Schedule 11 was amended, as from 26 September 2006, by section 70 Te Arawa Lakes Settlement Act 2006 (2006 No 43) by adding the item "Te Arawa Lakes Settlement Act 2006".

Schedule 11 was amended, as from 18 October 2002, by section 74 Te Uri o Hau Claims Settlement Act 2002 (2002 No 36) by adding the item "Te Uri o Hau Claims Settlement Act 2002". *See* clause 2 Pouakani Claims Settlement Act Commencement Order 2001 (SR 2001/19).

Schedule 12

ss 17A, 17B

Adverse effects assessment and report and controls in relation to a recognised customary activity

Schedule 12 was inserted, as from 17 January 2005, by section 38 Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94). *See* sections 40 to 43 of that Act.

1 Application and interpretation

(1) This schedule applies if a customary rights order has been made and appeals (if any) have been disposed of.

(2) In this schedule, **regional council** includes the Chatham Islands Council.

1
Controls by the Minister of Conservation

2 Power to impose controls

The Minister of Conservation may impose controls (including terms, standards, and restrictions) on a recognised customary activity only if he or she considers that—

(a) the activity has, or may have, a significant adverse effect on the environment; and

(b) the controls—

(i) will not prevent the activity; and

(ii) are reasonable and, in the circumstances, not unduly restrictive; and

(iii) are necessary to avoid, remedy, or mitigate any significant adverse effects of the activity on the environment.

3 Prerequisites before controls may be imposed

(1) The Minister of Conservation must not impose controls on a recognised customary activity under clause 2 unless—

(a) the Minister has either—

(i) received, under clause 11, a copy of an adverse effects report in relation to that activity; or

(ii) carried out his or her own adverse effects assessment and completed his or her own adverse effects report; and

(b) the Minister has consulted with the holder of the customary rights order and the Minister of Maori Affairs.

(2) In addition to the consultation required by subclause (1)(b), the Minister of Conservation may seek any relevant information and views before imposing controls on a recognised customary activity.

1—*continued*

(3) The Minister of Conservation must not undertake an assessment under subclause (1)(a)(ii) if, before he or she has begun an assessment, the relevant regional council notifies the Minister of Conservation under clause 7 that it is carrying out an adverse effects assessment of the recognised customary activity in accordance with clause 6.

(4) The Minister of Conservation must give written notice of his or her decision to carry out an adverse effects assessment under subclause (1)(a)(ii) not later than 5 working days after making that decision, to—

(a) the relevant regional council; and

(b) the holder of the relevant customary rights order.

4 Matters to be considered

The Minister of Conservation, when considering whether to impose controls on a recognised customary activity,—

(a) must have regard to—

(i) the effects on the environment of the activity; and

(ii) any adverse effects report received by the Minister in relation to that recognised customary activity; and

(iii) the views expressed by the persons with whom the Minister has consulted; and

(iv) any other relevant information and views that the Minister has received; and

(b) may have regard to—

(i) any relevant national policy statement:

(ii) the New Zealand coastal policy statement:

(iii) the relevant regional policy statement or proposed regional policy statement:

(iv) any relevant plan or proposed plan:

(v) any relevant planning document lodged with the regional council and recognised by an iwi authority, to the extent that the content of the document has a bearing on the resource management issues of the region.

1—*continued*

5 Timing and notification

The Minister of Conservation must—

(a) decide whether to impose controls on a recognised customary activity no later than 60 working days after—

(i) receiving an adverse effects report on the activity from the regional council; or

(ii) giving notice under clause 3(4) that the Minister will be carrying out his or her own assessment of that activity; and

(b) give written notice of his or her decision, and the reasons for it, to—

(i) the relevant regional council; and

(ii) the holder of the customary rights order; and

(iii) the Minister of Maori Affairs; and

(iv) the chief executive of the Ministry of Justice.

2
Adverse effects assessment and report by regional council

6 Adverse effects assessment

(1) A regional council must, not later than 5 working days after being so directed by the Minister of Conservation under section 17B, begin an adverse effects assessment of a recognised customary activity that may be carried out in its region.

(2) If a regional council has not been notified by the Minister of Conservation under clause 3(4) that the Minister intends to carry out his or her own adverse effects assessment, the regional council may, of its own initiative, carry out an adverse effects assessment of, and prepare an adverse effects report on, the recognised customary activity.

(3) However, the regional council may only carry out an assessment under subclause (2) if—

(a) it begins the assessment, for any reason, not later than 20 working days after the customary rights order is made; or

2—*continued*

(b) at any time after the expiry of the 20-working day period referred to in paragraph (a), it considers that the effects of the activity on the environment are, or are likely to be, materially different from those effects considered when, whichever is the latest,—

(i) the customary rights order was made; or

(ii) controls were last imposed; or

(iii) the controls were last reviewed under Part 3 of this schedule.

7 Notice regarding adverse effects assessment

(1) A regional council must give written notice regarding an adverse effects assessment in relation to a recognised customary activity if—

(a) it decides to carry out an adverse effects assessment under clause 6(2); or

(b) in the period between the date the relevant customary rights order was made and 20 working days after that date, it decides not to carry out an adverse effects assessment; or

(c) it is directed by the Minister of Conservation under clause 6(1) to begin an adverse effects assessment.

(2) The written notice required by subclause (1) must be given to—

(a) the Minister of Conservation; and

(b) the holder of the relevant customary rights order.

(3) Written notice given under subclause (1) must be given,—

(a) for an assessment required by the Minister of Conservation under clause 6(1), not later than 5 working days after receiving a direction from that Minister:

(b) for an assessment under clause 6(3)(a) or (b), not later than 5 working days after deciding to carry out an adverse effects assessment:

(c) for a decision referred to in subclause (1)(b), not later than 25 working days after the customary rights order was made.

2—*continued*

8 Process

A regional council, in carrying out an adverse effects assessment of a recognised customary activity,—

(a) must seek the views of the holder of the customary rights order; and

(b) may seek any relevant information.

9 Matters to be considered

A regional council, in carrying out an adverse effects assessment of a recognised customary activity,—

(a) must have regard to—

(i) the effects on the environment of the activity; and

(ii) any relevant information and views it has received; and

(b) may have regard to—

(i) any relevant national policy statement:

(ii) the New Zealand coastal policy statement:

(iii) its regional policy statement or proposed regional policy statement:

(iv) any relevant plan or proposed plan:

(v) any relevant planning document lodged with the regional council and recognised by an iwi authority, to the extent that the content of the document has a bearing on the resource management issues of the region.

10 Adverse effects report

(1) A regional council must complete its adverse effects assessment and adverse effects report no later than 40 working days after giving notice of the assessment under clause 7.

(2) The regional council must include in its adverse effects report—

(a) details of the recognised customary activity and the effects on the environment of the recognised customary activity; and

2—*continued*

(b) an outline of the information received and any views expressed by the holder of the customary rights order; and

(c) whether it considers the recognised customary activity has, or may have, a significant adverse effect on the environment; and

(d) its recommendations (if any) to the Minister of Conservation on any controls it considers the Minister of Conservation should impose under clause 2; and

(e) the reasons for any recommendations.

11 Report to be given to Minister of Conservation and holder

No later than 5 working days after completing an adverse effects report, a regional council must give a copy to—

(a) the Minister of Conservation; and

(b) the holder of a customary rights order.

3
Review of controls by the Minister of Conservation

12 Review

The Minister of Conservation may—

(a) review, in accordance with clauses 13 and 14, controls imposed on a recognised customary activity; and

(b) after reviewing the controls,—

(i) confirm them; or

(ii) revoke them; or

(iii) revoke them and impose new controls (which may include some or all of the reviewed controls).

13 Procedure for review

(1) If the Minister of Conservation reviews controls under clause 12, he or she must either—

(a) request, under section 17B, the regional council—

(i) to carry out an adverse effects assessment; and

3—*continued*

(ii) prepare an adverse effects report under clauses 6 to 11; or

(b) notify the regional council that the Minister will carry out an adverse effects assessment under clause 3(4).

(2) Clauses 2 to 5—

(a) apply (with all necessary changes) to a review of controls by the Minister of Conservation; and

(b) are to be read, in relation to a review, as if all references in those clauses to controls imposed by the Minister of Conservation on a recognised customary activity were references to controls on a recognised customary activity imposed or confirmed by the Minister after a review.

14 Timing of review

(1) The Minister of Conservation—

(a) may review the controls imposed on a recognised customary activity at any time; and

(b) must carry out a review of those controls if the holder of the customary rights order requests a review in writing.

(2) The holder of a customary rights order may request a review under subclause (1)(b) only if—

(a) at least 2 years have passed since the controls were imposed or since they were last reviewed; or

(b) the holder considers, on reasonable grounds, that the effects of the activity on the environment are, or are likely to be, materially different from those effects considered when, whichever is the later,—

(i) the controls were last imposed; or

(ii) the controls were last reviewed under Part 3 of this schedule.