

# Environmental law regime in New Zealand

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## Introduction

The Resource Management Act 1991 (the **Act**) is the dominant and most important piece of environmental legislation in New Zealand. The purpose of the Act is to promote the "sustainable management" of natural and physical resources. The Act deviates from the prior environmental law framework by focusing on the *effects* of activities rather than the activities themselves.

The Act can have a major impact on forest owners. Forest owners will often be required to obtain resource consents for various activities associated with their forest land, such as forest establishment and planting, thinning, and harvesting. Resource consents may also be required for constructing tracks/roads, culverts and bridges (building consents will also be required here); subdividing a forest or adjusting boundaries; creating easements over the forest land such as rights of way and telecommunications easements; or for any other activity having more than a minor effect on the environment. Obtaining resource consents will usually be a necessary part of a forest owner's operations. Forest owner's should take note that obtaining resource consents can take time and the result cannot be guaranteed.

The Act, together with the Historic Places Act 1993, also provides for the protection of cultural and historic features. The existence of such features on a forest owner's land will often result in restrictions being placed on how the forest owner can use the land.

The implications of the Act on forest owners' should not be underestimated. Complying with the Act is often time consuming and expensive and can sometimes even be prohibitive.

## The Act – an overview

### Key purpose

The key purpose of the Act is to promote the "sustainable management" of natural and physical resources. "Sustainable management" essentially means communities managing resources to provide for their social, economic, and cultural well-being and for their health and safety while meeting certain environmental imperatives. The potential of natural and physical resources to meet the reasonably foreseeable needs of future generations must be sustained, the life-supporting capacity of resources must be safeguarded and adverse effects of activities on the environment must be avoided, remedied or mitigated.

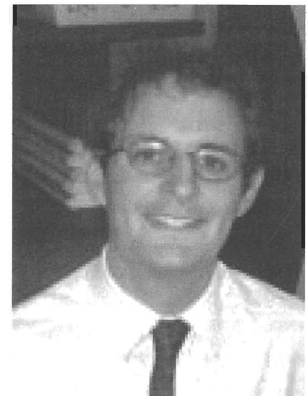
### Administration

Generally, Regional and District Councils are responsible for administering the Act. Each Council deals with different responsibilities and in most cases these roles are quite separate.

- **Regional Councils** - Regional Councils are charged with primary responsibility for the management of water, soil, geothermal resources, pollution control, natural hazard mitigation, lakes and river beds, and the coastal marine area.



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Regional Councils prepare Regional Plans (which must be reviewed every 10 years) setting out rules that apply to control the effects of activities on soil conservation (beneath the surface of the land); air and water pollution; and management of lakes, rivers and the coastal marine area.

Regional Plans take precedence over District Plans. National Policy Statements take precedence over both Regional and District Plans; however, there is currently only one National Policy Statement which relates to the coastal area.

- **District Councils** - District Councils are primarily responsible for land use management, including issuing resource consents for land use and subdivision. District Councils must prepare a District Plan which states the resource management issues, objectives, policies, methods to be used and environmental results envisaged for the district. Generally, District Plans contain rules setting out the activities which may be carried out in a zone, and the applicable performance standards (e.g. noise, hours of work) and development controls (e.g. the establishment of commercial forests). The rules are usually guided by the "zone" in which a site is located (e.g. industrial, rural, commercial, residential or open space). Planning maps identify zones and additional controls (such as designations, protected trees or heritage places) that may apply to a property.

### Activities

Generally, the rules in the relevant plan classify activities into the following:

- **Permitted activities** - which are allowed as of right by the plan and no resource consent is required, provided that the activity meets all relevant development controls and performance standards and other requirements contained in the plan. A certificate of compliance may be requested from the Council which will confirm the permitted status of an activity.
- **Controlled activities** - an application for resource consent is not usually publicly notified and cannot be refused by a Council. Conditions may be imposed on the consent. A Council will have regard to those

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matters provided for controlled activities in the plan.

- **Discretionary activities** - an application for resource consent may be publicly notified and the Council retains a discretion to grant consent, refuse consent or grant consent subject to conditions.
- **Non-Complying activities** - these are not provided for in a zone or otherwise do not comply with the relevant development controls. Applications are often publicly notified and cannot be approved by a Council unless the adverse effects on the environment are no more than minor, and the proposed activity is not contrary to the objectives and policies in the relevant plan.
- **Prohibited activities** - these cannot be undertaken at all and usually a plan change is the only way of providing for such an activity. An application for a plan change is a public process, with extensive opportunity for public submissions and rights of appeal to the Environment Court. It usually takes a minimum of twelve months to obtain a decision, and if that decision is appealed, it will take an additional eight to twelve months or longer.

## Resource Consents

### General

A resource consent is a permission to do something that would otherwise be restricted by a rule in a plan e.g. where the proposed activity is classified as a controlled or discretionary or non-complying activity. Land use (e.g. forest establishment and planting; thinning; harvesting; constructing culverts, bridges, tracks and sheds) and subdivision consents are granted by District Councils. Coastal, water and discharge permits are granted by the Regional Council. In some circumstances weed and/or pest control activities may also require resource consent.

Forest owners should be aware that the provisions of the Building Act will also need to be complied with in relation to the erection of any building (which would include bridges, culverts and sheds) on forest land.

### Notification

The Act allows for the public notification of resource consent applications. If notified, any member of the public may lodge a submission either in favour of or in opposition to a proposal, and subsequently to take an appeal to the Environment Court if that person is dissatisfied with the Council's decision.

Applications may proceed without public notification in certain circumstances. These include:

- where the consent of persons affected by the proposed activity have been obtained in advance;
- where any adverse effects on the environment are not more than minor;
- typically, where the application is for subdivision consent.

If the Council decides not to notify the application, there is no provision for public participation in the Council's assessment of the application. There is no right of appeal against the Council's decision not to notify an application, other than to bring judicial review proceedings in the High Court challenging that decision.

If the Council does decide to publicly notify the resource consent application, any person may lodge a

submission in relation to it. Once submissions have been received and assessed, the Council holds a hearing. Any submitter may appear at the hearing and present evidence. After the hearing the Council will make a decision either granting or refusing consent.

A notified resource consent application will usually take about four months to be processed. A non-notified application will usually take six weeks to process. If an appeal is lodged the process will take an additional eight months to 2 years to be heard by the Environment Court. Accordingly, the timeframes can be lengthy and in some cases prohibitive.

### Maori issues

The Act introduces positive obligations and specifically emphasises the interests and resource management concerns of Maori. The most important principle is the duty of consultation, which essentially may require forest owners to consult with local tangata whenua where appropriate before proceeding with a particular development e.g. establishing and planting commercial forest.

Maori issues are an important part of the resource consent process. Anyone considering developing a major commercial forest must take a proactive role to discharge adequately consultation obligations. The key to achieving this is to establish who exercises mana whenua (customary authority) over the particular area and consult effectively. The relevant Council can usually assist in identifying the key parties for consultation.

### Compliance

Resource consents can, and often are, issued subject to various conditions that must be complied with.

It is important to ensure that the forest land is in full compliance of all conditions of resource consent at all times. Renewal of the relevant resource consents should be undertaken when necessary.

### Expiry

Once a resource consent has expired, a forest owner may need to apply for a new consent. Just because a forest owner obtained a resource consent for an activity previously, does not mean that the forest owner will automatically be issued with a new resource consent for the activity.

### Existing use rights

Resource consent is not required when an activity has "existing use rights", that is land may be used in a manner that contravenes a rule in the plan if:

- that use was lawfully established before the rule became operative; and
- the effects of the use are the same or similar in character, intensity or scale to those which had existed before the rule became operative or the proposed plan was notified.

### The Environment Court

This Court is a separate and independent judicial body established under the Act. It has jurisdiction for all appeals from decisions under the Act (e.g. Council decisions), and has a number of different divisions sitting

throughout the country.

### Enforcement

The Act provides a number of enforcement mechanisms to ensure compliance with the statutory regime. There are three levels of enforcement: administrative enforcement, which may take the form of declarations, abatement notices, excessive noise directions and infringement offence provisions, all instigated by the relevant territorial authority;

- civil enforcement through enforcement orders, issued by the Environment Court at the instigation of a Council or a member of the public. The potential scope of enforcement orders is wide. Orders may require a person to cease a certain activity or take positive action to remedy adverse effects on the environment; and
- offence provisions. The most serious offences are punishable by a fine of up to \$200,000 and a prison sentence of up to two years. For a continuing offence, a fine of up to \$10,000 per day may be imposed. Any person may lay an information (the first step in a prosecution) within six months of the time when the offence first became known, or should have become known to the local authority in question. These are offences of strict liability, which means that it is not necessary to prove that the defendant intended to commit the offence.

### Heritage issues

Protection of cultural and historic features is achieved through the Act and the Historic Places Act 1993.

The New Zealand Historic Places Trust administers the Historic Places Act 1993. The Trust has duties in respect of registering historic areas, historic places, wahi tapu (a place sacred to Maori) and wahi tapu areas (an area of land containing wahi tapu). The Trust also protects archaeological sites (being a shipwreck or place associated with human activity that occurred before 1900 or that provides evidence relating to New Zealand history) whether or not they are registered, or even known. The question of compensation is a vexed question as there are no specific compensation provisions

under the Historic Places Act.

The relevant District Council is notified of all registered places and areas in its district by the Historic Places Trust. All persons exercising functions and powers under the Act (e.g. Councils) must have particular regard to the recognition and protection of the heritage values of sites, buildings, places or areas. The Act also provides for heritage orders, which can be imposed by a heritage protection authority, being any Minister of the Crown, local authority, the Historic Places Trust and any approved body corporate. The process is open to public submissions and any submitter can participate in Council hearings and in any appeals. Heritage orders can be made in respect of a variety of significant sites and features. Once a requirement for a heritage order has been made, no person is allowed to do anything on the land affected which could adversely affect the site or its heritage values. Once approved, a heritage order becomes part of the relevant District Plan and operates like a rule. If forest land is subject to historic areas, historic places, wahi tapu, wahi tapu areas or heritage areas there may be constraints on its use, including intensity or scale of the use and subdivision potential.

### Matters of national significance

The Act also sets out a number of matters of national importance (such as the preservation of the coastal environment, wetlands, lakes and rivers, the protection of outstanding natural features, landscapes and significant indigenous vegetation) as well as a number of other matters to which decision-makers must have regard (such as the intrinsic values of ecosystems and the maintenance and enhancement of amenity values).

### Proposed changes to the Act

The Act is under growing criticism from businesses who claim it hinders development and costs too much time and money. A reform bill for the Act was put forward in 1999 to try and address some of the perceived weaknesses of the Act. However, it remains to be seen whether the reform bill will become law, and if so, what form it will take. Reform to the Act is shaping up to become a significant election year issue.

## A Guide to Forestry Investment in Australia and New Zealand

A comprehensive review of the investment opportunities, and risks, in the expanding plantation forestry sector of Australia and New Zealand.

Contents include:

\$	Management structures	\$	Processing Outlets
\$	Forest Resources	\$	Financial Performance
\$	Management Practices	\$	Investment Opportunities
\$	Wood Production	\$	Investment Risks

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