

Resource Management Act Overview



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Roadmap

- Summary
- Origins of the RMA
- Overview of the RMA
- Structure of the RMA
- Resource Consent process
- Designations (briefly)
- Role of the Environment Court
- Reform
- Case Study – Cohaus

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RMA – a summary

- Primary environmental statute in NZ
- Regulates land, air and water
- Seen as radical at the time of enactment
- Lengthy and complex – 836 pages, 400 ++ sections, 13 schedules *plus* regulations, policy documents and planning instruments
- Blamed for *inter alia*:
 - Housing crisis
 - Poor water quality
 - Not adequately protecting landscapes
 - Habitat loss for biodiversity
- Reform coming..

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Origins – Common law

- Evolution of environmental law:
 - Nuisance – damage to property
 - *Aldred's case*
 - Also land law tools e.g. easements / restrictive covenants
- Difficulties in relying solely on common law – individualist and *ad hoc*
- Growing environmental awareness in 70s and 80
- Tragedy of the commons - "*freedom in a commons brings ruin to all*"

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Origins - Previous NZ environmental legislation

- Prior to RMA, dealt with in many statutes:
 - Town and Country Planning Act
 - Water and Soil Conservation Act
 - Clean Air Act
 - Noise Control Act
 - Mining Act
 - Petroleum Act
 - Marine Pollution Act
- RMA repealed and integrated these different pieces of legislation
- "*An act to restate and reform the law relating to the use of land, air and water*"

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Resource Management Act 1991 – Focus on effects

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—*
 - 1) *Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
 - 2) *Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
 - 3) *Avoiding, remedying, or mitigating any adverse effects of activities on the environment.*

- Was intended to be "effects" based
- Anthropocentric and ecocentric concepts

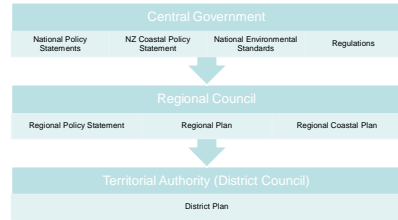
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Resource Management Act 1991 - Structure

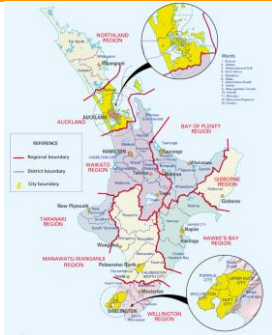
- Three tiered management system – national, regional and district.
- Hierarchy of planning documents.
- Hierarchy of provisions within planning documents.



Tiered Management System



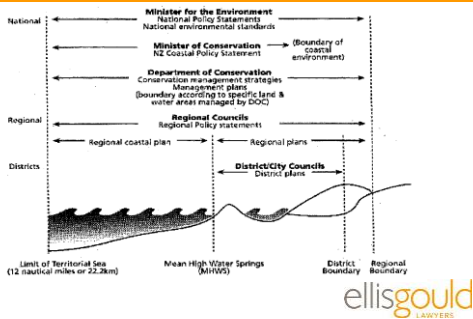
Administrative Boundaries - City, District and Regional Councils



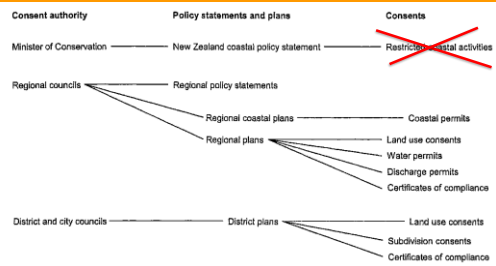
Administrative Boundaries - City, District and Regional Councils



Areas of Management Responsibility - Policy Statements and Plans

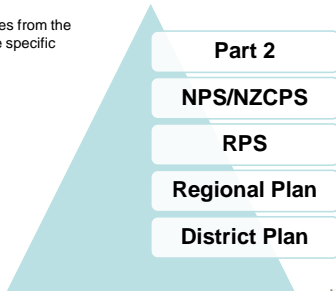


Areas of Responsibility - Consents



RMA - Hierarchy of documents

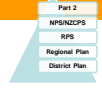
Scheme moves from the general to the specific



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RMA - Hierarchy of documents

- Part 2 is the “engine room”
- Purpose and principles
 - Section 5 *Purpose* – sustainable management
 - Section 6 *Matters of National Importance* – “Shall recognise and provide for”
 - Section 7 *Other matters* – “shall have particular regard to”
 - Section 8 *The Treaty of Waitangi* – “shall take into account”
- Purpose of lower order documents is to assist in achieving the purpose of the RMA
- Lower order documents must be prepared in accordance with Part t 2



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NPS / NZCPS

- National perspective
- National Policy Statements
 - For matters of ‘national significance’
- NZ CPS
 - Must be one at all times
- Both have objectives and policies
- Both must be reflected in lower order policy documents
 - Contents of RPS / Regional Plan / District Plan must “give effect to” NPS / NZCPS



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Regional Policy Statement

- Regional perspective
- Must be one at all times
- Provides an overview of the issues for the Region
- Objectives, policies and methods (but not rules) to achieve integrated management of natural and physical resources
- Must be “given effect to” in lower order documents e.g. Regional and District Plans



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Regional Plans District Plans

- Regional or District Perspective
- Contain objectives, policies and rules (i.e. consent requirements)
- Regional and District Rules differ
- Must give effect to higher order documents (e.g. RPS, Pt 2)



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Hierarchy

“The effect is that as one goes down the hierarchy of documents, greater specificity is provided both as to substantive content and to locality – the general is made increasingly specific. The planning documents also move from the general to the specific in the sense that, viewed overall, they begin with objectives, then move to policies, then to methods and “rules”.”

- Per Arnold J, *EDS v NZ King Salmon* [2014] NZSC 38

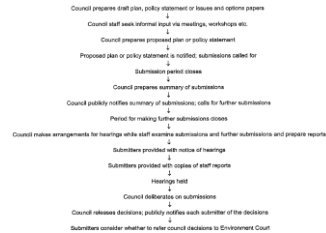
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Preparation of Planning Documents

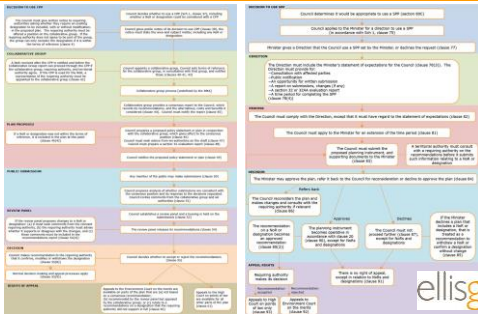
- Must be prepared through processes set out in the RMA
- National Direction follows a different process to Regional / District documents
- Public consultation important in developing regional / district documents



Process for Preparing Policy Statements and Plans – Schedule 1 (Usual)



Process for Preparing Policy Statements and Plans – Collaborative / Streamlined



Process for Preparing Policy Statements and Plans - Other legislation

- Bespoke processes for Auckland / Christchurch:
 - Local Government (Auckland Transitional Provisions) Act 2010
 - Christchurch Earthquake Recovery Act 2011
- Urban Development Act 2020 for "Specified Development Projects"

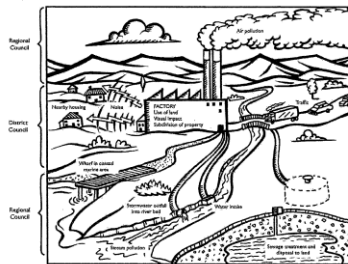


Resource consents

- Section 9 – use of land
- Section 11 – subdivision
- Section 12 – use and occupation of the CMA
- Section 13 – use and occupation of river and lake beds
- Section 14 – water (take, use, dam, diversion)
- Section 15 – discharge of contaminants



Control of effects



- Section 9 – land use
- Section 11 – subdivision
- Section 12 – Coastal Marine Area
- Section 13 – river and lake beds
- Section 14 – water
- Section 15 – discharge of contaminants



Resource consents - Types of activities

- Permitted activities
- Controlled activities
- Restricted discretionary activities
- Discretionary activities
- Non-complying activities
- Prohibited activities

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Other relevant provisions

- Section 10 – existing use rights
- Section 16 – duty to avoid unreasonable noise
- Section 17 Duty to A, R or M adverse effects

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Resource Consents - Applications

- Section 88 RMA
- Must be in the prescribed form
- Schedule 4 RMA sets out information requirements. See cl 2:
 - (1) An application for a resource consent for an activity (the activity) must include the following:
 - (a) a description of the activity;
 - (b) a description of the site at which the activity is to occur;
 - (c) the full name and address of each owner or occupier of the site;
 - (d) a description of any other activities that are part of the proposal to which the application relates;
 - (e) a description of any other resource consents required for the proposal to which the application relates;
 - (f) an assessment of the activity against the matters set out in Part 2;
 - (g) an assessment of the activity against any relevant provisions of a document referred to in section 104(1)(b).
 - (2) The assessment under subclause (1)(g) must include an assessment of the activity against—
 - (a) any relevant objectives, policies, or rules in a document; and
 - (b) any relevant requirements, conditions, or permissions in any rules in a document; and
 - (c) any other relevant requirements in a document (for example, in a national environmental standard or other regulations).
 - (3) An application must also include an assessment of the activity's effects on the environment that—
 - (a) includes the information required by clause 6; and
 - (b) addresses the matters specified in clause 7; and
 - (c) includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.
- Additional information required for certain applications (e.g. subdivision consent, reclamation)

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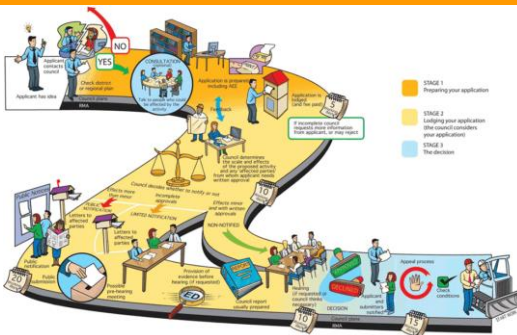
Resource Consents - Applications

An assessment of environmental effects (AEE) must include (cl 6, Sch4)

- Any matters specified in the relevant plan
- A description of the proposal
- If significant effects are likely – an assessment of alternatives
- Assessment of the actual or potential environmental effects
- If for the use of hazardous substances and installations, an assessment of environmental risk
- If for discharge consent, describe:
 - nature of the discharge and the sensitivity of the receiving environment
 - possible alternative methods of discharge
- Mitigation measures
- Affected persons, whether consulted and what their responses were
- If scale or significance warrants it, how effects will be monitored and by whom.
- 3 pages to 300+ pages!

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Resource Consents - Procedure and Timeframes



Designations

- Designations are an exception to the provisions of a District Plan – s 9 does not apply (although OPW may be required)
- If applies over private land, restricts what people may do
- Available to “Requiring Authorities” to provide for public works
 - Crown
 - Network Utility Operators
- Application process similar to resource consent
 - May be non-notified or limited notified
 - Heard by the Council, who makes “recommendation” to the requiring authority
 - Key difference - requiring authority has decision making power
 - Appeals to Environment Court

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Other consenting processes...

- **Projects of national significance (designations and resource consents)**
 - Direct referral to Environment Court
 - Referral to Board of Inquiry
- **Any resource consents or designations**
 - Can be referred directly to the Environment Court
- **Also, now Covid Recovery (Fast Track Consenting) Act 2020**
 - Expert Consenting Panel (chaired by a Judge)
 - Focus on projects with to economic / public benefits

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The Environment Court - Role

Appeals – against decisions

- Resource consents
- Proposed district and regional plans
- Proposed regional policy statements
- Designations
- Heritage orders
- Recommendations for water conservation orders.

Hearing and deciding significant applications

- Direct referral (America's Cup, Waikeria Prison)
- Proposals of national significance (can also be referred to a Board of Inquiry e.g. Waterview Connection)

Enforcement orders – command to do something

Declarations – clarifying an issue

*Prosecution (criminal enforcement proceedings) dealt with in the District Court

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The Environment Court - Who

Environment Judge (or Judges)

- Chief Environment Court Judge (Chief Environment Judge Kirkpatrick)
- 8 other Judges, including 3x Alternate Judges

Environment Commissioners

- Range of backgrounds (e.g. engineering, ecology, planning, architecture)
- 15 Commissioners, including 3x Deputy Commissioners
- Lead alternative dispute resolution processes
- Usually matters heard with 1x Judge and 2x Commissioners

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The Environment Court - Where

Registries

- Auckland
- Wellington
- Christchurch

But hear cases all over New Zealand.

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The Environment Court - Process

Application / Appeal lodged
Pre hearing conference

Alternative Dispute Resolution
- Mediation
- Expert Conferencing

Evidence Exchange

Hearing

Decision

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Where to from here?

- **Comprehensive RMA reform announced**
- **Three new Acts**
 - Natural and Build Environments Act (NBA)
 - Strategic Planning Act (SPA)
 - Climate Change Adaptation Act (CCA)
- NBA and SPA introduced Dec 21
- Likely to reduce 100+ RMA plans to 14
- 2+ years before law

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Case Study - Cohaus

- Co-housing development in Grey Lynn

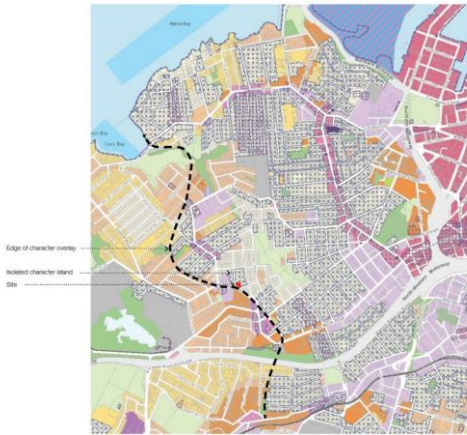


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Case Study – Cohaus The Proposal

- 20 units – two main blocks and a villa.
- 2400m² site (approx. 6 small sections)
- Located in Surrey Crescent in Grey Lynn
 - Movement infrastructure e.g. cycle lanes, bus routes
 - Neighbourhood amenity
- Response to Auckland's housing supply and affordability issues
 - Population increasing, home ownership decreasing, house prices increasing, supply low
- Cohousing - Live in private apartments, jointly own common spaces (e.g. library), share amenities, work together to run the complex.
- Established housing model in Denmark, Germany, Switzerland
- Different model of land use and parking provision
 - Mix of typologies (more dense!) & shared spaces (e.g. laundry, common room, guest room)
 - Carparking at 0.5 cars per unit. 2- 6 x shared cars. Cycle parking.

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Case Study – Cohaus Consents Required

- Overall - Discretionary Activity
- Consents required for:
 - Development in Special Character Area
 - Integrated Residential Development
 - Infringements to bulk and location standards (e.g. height, height in relation to boundary, building coverage),
 - Transport standards (e.g. parking)
 - Earthworks
 - Tree works
- "Residential activity" so no right of appeal

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Case Study – Cohaus Application

- Application Form
- Rules Assessment
- Pre Application Meeting Minutes
- Written Approvals / Consultation Summary
- Architectural Plans
- Certificate of Title
- Assessment of Environmental Effects (Planning)
- Expert Assessments
 - Urban Design
 - Character
 - Traffic
 - Infrastructure Report
- + Section 92 Response (Planning, Character, Traffic, Amenity and Streetscape, Stormwater/Wastewater, Earthworks)

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Case Study – Cohaus The Process

- Pre-application meetings (August 2017)
- Lodge application and AEE with Council (March 2018)
- Section 92 Request (June 2018)
- Publicly Notified (June 2018)
- Initial Council recommendation – reject (September 2018)
- Evidence (Architecture, Consultation/Engagement, Concept, Urban Design, Heritage x 2, Transport x 2, Engineering, Planning) (September 2018)
- Revised Council recommendation – accept (September 2018)
- Submitter Evidence (September 2018)
- Rebuttal Evidence (September 2018)
- Hearing by Independent Commissioners – (2x days in September 2018, 1x day in October 2018)
- Decision issued (December 2018)
- 18 months all up

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Case Study - Cohaus

Redeveloping a brownfield site, with existing infrastructure, which is well-located near local neighbourhood shops, community and civic spaces and the working environments of the city, rather than contributing to environmental degradation through greenfield development

OR

Generating unacceptable adverse effects on the local neighbourhood by locating a large development within a residential neighbourhood, planned without adequate consideration of the negative visual effects on the character of the area and the environmental impact of increased demand for parking, wastewater and stormwater and local schools.

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Case Study – Cohaus Key Issues

Tension - maintaining status quo vs. quality compact urban form and provision of housing choice

- Location/Interface – Special Character Area and Single House Zone
- Visual / Amenity
- Carparking

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Case Study – Cohaus Submissions

- "I care about this area and what it looks like"
- "people are no longer willing to invest in this area with the threat of a massive development next door."
- "The plans for inadequate parking on the Cohaus site will have longterm consequences for this area"
- "This makes the quiet suburban area I value into another cramped and inhospitable part of the inner city, which, as a community, we are trying hard to avoid."
- "It is not appropriate to overdevelop the site in such a sensitive environment"
- "We understand the principles of the Cohaus proposal and are broadly supportive of this form of development, in concept. Unfortunately, we do not believe the current proposal sits appropriately on this site nor in this zone"

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Case Study – Cohaus

Key Issues - Location

- Location/Interface
 - Special Character Area Overlay: note a villa
 - Zoning: Single House but right next to Mixed Use / THAB
 - Unusually large site
 - Where density should be located?
- Submitter issues
 - Character, dominance, amenity, materiality
- Response
 - Relocate villa
 - Location of bulk – tallest along Surrey Crescent Frontage
 - Evidence from heritage and urban design experts
 - Look at wider character of the area
 - Context – transition
 - Acceptable level of effects on adjacent properties
 - Standards as triggers for consent, not inflexible rules

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Villa relocated and renovated

Surrey building

Case Study – Cohaus

Key Issues - Carparking

- Carparking
 - Adequacy of on-site carparking.
- Relevant matters:
 - Location – Minimum carparking requirement SHZ of MU/THAB
 - Location – arterial road, served by the bus network and close to intensive bus routes (Gt Nrth Rd)
 - Consist with Council's objectives w respect to mode change from private vehicles to public transport/active modes
- Neighbours Concerns:
 - neighbourhood amenity, implications for on-street parking availability (commuter parking and school), safety of pedestrians and children on the Surrey Crescent and Firth Road Corner and the effects of construction traffic.
- Response?
 - Evidence from transport experts
 - level of traffic generated can be integrated into road network (parking survey)
 - Directives of AUP / Auckland Plan – parking policy instrument to reduce travel demand in intensified areas while requiring parking in outer areas or where lack of parking outweighs positive transportation effects
 - Council's initial recommendation to decline. Revised following evidence exchange.

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Thank you for having me...

- Any questions?

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