

Conducting hearings under the Resource Management Act 1991

A guide for applicants and submitters

This guide has been prepared to assist applicants, submitters and legal counsel in understanding the procedures adopted by the Taranaki Regional Council for holding resource consent hearings.

It is a **guide only** and has been prepared in good faith with a desire to be helpful. It is **not** to be relied on as constituting legal advice on the topics dealt with.

Taranaki Regional Council
Private Bag 713
Stratford

November 2009

Document: 683839

Table of contents

1.	Resource consents	1
1.1	What is a resource consent?	1
1.2	Who needs to apply for a resource consent?	1
2.	Applications	1
2.1	How do I apply for a resource consent?	1
2.2	How do I prepare an assessment of effects on the environment?	2
2.3	What if I want to apply for more than one consent?	2
2.4	Does the Council have to accept my application?	2
2.5	Can the Council ask me for more information?	2
2.6	What if I don't want to provide more information?	3
2.7	What will making an application cost me?	3
3.	Submissions	3
3.1	How will I know if an application affects me?	3
3.2	Who can make a submission on an application?	3
3.3	How do I make a submission?	4
4.	Hearings	5
4.1	Will a hearing be necessary?	5
4.2	What is a pre-hearing meeting?	5
4.3	Why are hearings necessary?	6
4.4	What information is protected as sensitive information?	6
4.5	Who conducts Council hearings?	6
4.6	Conduct at Council hearings	7
4.7	May I speak and call evidence at a hearing?	8
4.8	May I speak Maori?	8
4.9	How do I make submissions and give evidence at a hearing?	8
4.10	What procedure is followed at Council hearings?	9
4.11	What is a combined hearing?	11
4.12	What is a joint hearing?	11
5.	Decisions	11
5.1	What factors does the Committee consider?	11
5.2	Who makes the final decision?	12
5.3	Does the Hearing Committee always make the final decision?	12
5.4	How will I know what was decided?	12
5.5	How can I appeal against the decision?	12
6.	Where can I get further information about Council hearings?	13
	Appendix I Purposes and principles of the Resource Management Act 1991	14

1. Resource consents

1.1 What is a resource consent?

A resource consent is a permission to use or develop a particular resource, and/or to carry out an activity that affects the environment in some way. Under the Resource Management Act 1991 [the Act], the Regional Council is responsible for determining four types of resource consents for activities in the environment:

- coastal permits [for all activities on the foreshore and seabed];
- water permits [to take, use, dam or divert water, heat or geothermal energy];
- discharge permits [to air, land, underground and surface water]; and
- land use consents [for activities on riverbeds such as erecting a structure].

1.2 Who needs to apply for a resource consent?

A resource consent from the Regional Council is required when an activity is restricted by:

- the Act;
- a rule in a regional plan; or
- a rule in a proposed regional plan.

Any person or body may apply for a resource consent for permission to carry out a restricted activity. To determine whether a consent is needed for a proposed activity, any person may contact the Consents Section of the Regional Council. Council staff will advise people whether or not they need a resource consent for the proposed activity.

The Council has also prepared guides to its regional plans which can be provided to assist people in determining if they need consents.

2. Applications

2.1 How do I apply for a resource consent?

An application must be made to the Regional Council on the appropriate form [obtainable from the Regional Council]. An application must include:

- a description of the proposed activity;
- the location of the proposed activity;
- an assessment of any actual or potential effects the activity may have on the environment, and ways in which adverse effects might be mitigated;
- any information required by a plan or regulations; and
- a statement specifying all other resource consents the applicant may require for the proposed activity, and whether these consents have been applied for.

2.2 How do I prepare an assessment of effects on the environment?

The Council's standard application forms give good guidance on the assessment of effects needed. This form lists all the matters an applicant must take into consideration. Information about any effects must be at a level of detail that corresponds with the scale and significance of the activity's actual and potential impact on the environment. An applicant should discuss probable environmental effects of the proposed activity with those people who may be affected if consent is granted. This will help in assessing the likely environmental impacts, and may avoid delays in the processing of the application.

If the Council considers the AEE information given by an applicant is inadequate, the Council may ask for further information to be provided, or the application may not be accepted.

Applicants may require the assistance of a consultant to prepare an AEE if the effects of the activity are not easily identified and understood.

2.3 What if I want to apply for more than one consent?

If an applicant needs more than one resource consent for a proposed activity, [s]he should apply for all those consents at the same time. If the Council believes that hearing all the applications at one time would allow it to better understand the nature of a proposal, the Council may decide not to proceed with the application until it has received all related consent applications.

2.4 Does the Council have to accept my application?

If the application is incomplete, the Council will return the application to the applicant noting the additional information that is necessary to complete the application.

2.5 Can the Council ask me for more information?

After accepting the application, the Council may ask an applicant for further information. While the Act does not specify what things further information may be requested for, a request should generally relate to providing a better understanding of:

- the nature of the proposed activity;
- the effect(s) of the proposed activity on the environment – this may also include information about any consultation undertaken and how key groups consider the proposal might affect them; and
- The ways any adverse effects may be avoided, remedied or mitigated.

Any further information sought should be a reasonable request and not for trivial matters which do not add to the understanding of the application.

Applicants have 15 working days to provide the additional information requested. If they cannot provide the information within that time, applicants need to tell the Council that they will provide the information, but cannot do so within the 15 days. The Council will then set another date.

If any application does not respond to a Council request within 15 working days, the Council will process the application without the information. This would generally result in the application being declined.

2.6 What if I don't want to provide more information?

Applicants can also refuse to provide any or all of the information requested. If that occurs, the Council will process the application without the information. This would generally result in the application being declined.

2.7 What will making an application cost me?

The minimum cost of any application that must be notified will be \$1100 [plus GST]. However, the Council's full cost of processing the application will be charged to the applicant. This will be more than \$1100 and if a hearing is necessary, or substantial Council time is necessary to resolve any submissions, the cost will be substantially more.

The Council is entitled to recover from an applicant the reasonable costs of receiving, processing and/or granting a resource consent. The Council may require a deposit against costs before dealing with an application and may obtain an applicant's written undertaking to meet necessary costs. The Council may withhold granting a consent until an applicant has paid all charges in full.

3. Submissions

3.1 How will I know if an application affects me?

For applications with effects that are minor or less than minor the Regional Council will require the applicant to get your written approval if it determines that you may be adversely affected.

For applications where the effects will be more than minor, the Council will publicly notify the application, and may put up a notice on or near the site of the proposed activity. This means the whole community will have a chance to consider the application and make submissions on it.

3.2 Who can make a submission on an application?

Any person or body may make a submission on an application that has been publicly notified. For an application with effects no more than minor anybody the Council determines to be adversely affected, but who doesn't give approval, will be invited to make a submission.

A submitter may make a submission in support of an application, or object to an application that would prejudice either his or her interests or those of the general public if granted.

A submission may relate to all or any part of an application.

3.3 How do I make a submission?

A submission on an application must be in writing. The submitter must state in his or her submission:

- the reasons for making the submission;
- the decision the submitter wants the Council to make [if known to him or her];
- the general nature of any conditions the submitter wants the Council to attach to the application; and
- whether or not the submitter wants to be heard [at a formal hearing] in support of the submission.

The submitter must sign and date his or her submission and include his or her name, postal address, and telephone number.

A submission may state whether it supports or opposes the application. A submission objecting to an application should include specific grounds for objection. These may include [for example]:

- interference with the quality or quantity of a resource available to others;
- inappropriate use or development of wetlands, lakes, or rivers;
- the need to preserve a particular resource;
- potential damage to the social, economic or cultural well-being, health or safety of a person or community; or
- interference with the customary usages of Maori people, or with the spiritual relationship with water, ancestral lands, or other taonga.

All submissions on an application must be received by the Regional Council within 20 working days of personal notification or public advertisement of the application. A submission must be properly completed on the appropriate form, which is available from the Council officers, and on the Council's website [www.trc.govt.nz].

A submitter must also deliver a copy of his or her submission to the applicant as soon as reasonably practicable after delivering a copy to the Council. After the closing date for making submissions, the Council will give the applicant a list of all the submissions it has received.

4. Hearings

4.1 Will a hearing be necessary?

Not all applications for resource consents require a formal hearing. A formal hearing is only necessary if:

- the Council thinks it is necessary to hold a hearing [perhaps due to the controversial nature of a proposal or the degree of public interest at stake]; or
- either an applicant or submitter has requested to be heard.

However, sometimes an applicant or submitters withdraw their request to be heard after attending a pre-hearing meeting.

4.2 What is a pre-hearing meeting?

Council officers usually invite applicants and submitters to meet together informally at a pre-hearing meeting before a formal hearing is required. The Council can **require** parties to an application to attend a pre-hearing meeting but attendance is not usually mandatory. The purpose of pre-hearing meetings is to:

- make clear or work out points of disagreement or misunderstanding;
- make people aware of relevant regional policies;
- make people aware of what matters will need to be supported by technical evidence; and
- give people an opportunity to exchange any technical evidence they have.

Pre-hearing meetings may even resolve concerns completely, and make a formal hearing unnecessary.

Pre-hearing meetings are not hearings, and no one will be disadvantaged in the hearing by anything he or she may say at a pre-hearing meeting. No formal record is kept of what is said, and people should feel free to speak honestly and openly at these meetings. Following the meeting the chairperson must prepare a report that sets out the issues that were agreed and those that are still outstanding. This report must be sent to the hearing committee and the parties so that they have it at least five days before the hearing.

The officer's report will note any agreements reached as a matter of record and show public participation in decisions about environmental matters.

The people who will make a decision on the application are not able to attend pre-hearing meetings unless the Council, the applicant and the submitters at the meeting agree to this.

Lawyers are discouraged from attending.

Even when some issues have been clarified or resolved, it may still be necessary to have a formal hearing. The Council will give at least 10 days notice of the starting

date, time and place of the hearing to the applicant and every submitter who stated a wish to be heard in his or her submission.

4.3 Why are hearings necessary?

Hearings ensure that a Council's power to grant resource consents is exercised:

- fairly and reasonably;
- in accordance with the law and regional policies; and
- to achieve the objectives and purposes of the Act.

Hearings enable the Council to obtain all necessary information in order to make a fair and informed decision, based on the recommendations or decisions of a Hearing Committee appointed by the Council. Hearings also provide an opportunity for public participation in decisions made about environmental matters. Hearings must therefore be held in public, unless the need to protect sensitive information means the public may be excluded from all or part of the hearing.

4.4 What information is protected as sensitive information?

The Council may 'protect' information if such protection is necessary to avoid:

- serious offence to tikanga Maori;
- disclosure of the location of waahi tapu;
- disclosure of a trade secret; or
- unreasonable prejudice to the commercial position of the person who supplied, or is the subject of, the information.

The importance of avoiding such offence, disclosure or prejudice, must outweigh the public interest in making that information available for the Council to protect information.

In order to ensure sensitive information is protected, the Council may:

- exclude the public from all or any part of the hearing; or
- prohibit or restrict the publication or communication of information.

Any applicant or submitter may apply to the Council to have information protected, or appeal to the Environment Court to have a protection order lifted or varied.

4.5 Who conducts Council hearings?

Hearings are generally conducted by a Committee of three people [usually Councillors] chosen by the Council. The Council will choose people who have knowledge and experience in matters that are the subject of the hearing. The Chairperson of the Committee has control of the hearing, and may vary the procedure that is to be followed.

Hearing Committees have all the powers of a District Court in conducting and maintaining order at the hearing. They have the right to require the attendance of any person whose evidence may assist them, or to inspect any relevant documents or papers.

Cross examination is not allowed at a hearing. Only Committee members may question any party or witness. If you do not understand something that a party or witness has said, you may ask the Chairperson to clarify the matter.

Where there is a conflict of interest or other appropriate reasons, the Council will appoint a single person or people [known as Hearings Commissioners] to conduct a hearing. A Commissioner is delegated the same powers and duties as a Hearing Committee. The Council as a whole may also conduct a hearing, but this would be an infrequent occurrence.

More than half of any hearing committee, including the chairperson, must be 'accredited' by passing a Ministry for the Environment approved course.

The applicant or submitters may request that an application is heard by an independent commissioner [or commissioners], ie. not Councillors. Any additional cost of an independent commissioner is paid by the person[s] who made the request.

4.6 Conduct at Council hearings

Any party may support or oppose an application. This is an entitlement under the Act, but the manner in which any party chooses to exercise this right must be carefully considered and conduct at all times must be suitable for the formal nature of the proceedings.

Council hearings must be conducted in a professional manner, with parties to the hearing showing respect for the Committee and others at the hearing.

The hearing must be free of obstruction, insult or interference if justice is to be administered fairly. Anything which obstructs or interferes with the judicial process may deny a 'fair hearing' to any party to the hearing.

Under the Act the Committee has the powers of a District Court to deal with disorder should it arise. Hence, the Committee Chairperson can determine that disorder is occurring and will deal with any disorderly person promptly and effectively, so that the judicial process may continue.

If, during the course of a hearing, any person behaves unacceptably, he or she will be warned by the Chairperson. If the person makes a prompt and sincere apology, this may suffice but if the unacceptable behaviour persists the Chairperson may adjourn the hearing. If the behaviour continues to persist then the Chairperson may order the offender[s] off the premises, with assistance of the Police, and proceed with the hearing in their absence.

4.7 May I speak and call evidence at a hearing?

The only people entitled to speak and call evidence at the hearing [either personally or through a representative] are:

- the applicant;
- every submitter who stated a wish to be heard in a written submission;
- any person required to attend by an official summons; and
- Council reporting officers and/or witnesses.

Every person at a hearing has the same privileges and freedoms as in a court of law. All parties may call witnesses to support their application or submissions, as well as giving evidence themselves.

4.8 May I speak Maori?

Any applicant or submitter and their witnesses or representative may speak Maori at a hearing.

Any person intending to speak or give evidence in Maori must give reasonable notice of that intention to the Council so that a competent interpreter can be arranged. A notice of that intention should be given in writing. The right to speak Maori does not entitle any person to insist on being addressed or answered in Maori.

If any question arises concerning the accuracy of an interpretation, the Chairperson will determine what it is appropriate to do in the circumstances.

4.9 How do I make submissions and give evidence at a hearing?

All submissions and evidence presented at a hearing should be in writing, and typed if possible. It needs to be in writing because although the members of the Hearing Committee will listen to what people say, but it is important that they have an accurate record of the evidence when considering their decision.

Applicants and submitters should bring to the hearing sufficient copies of their evidence or submissions to give a copy to each member of the Committee and all other parties [the Council's Senior Consents Administration Officer will tell you how many copies will be needed for the hearing].

The Senior Consents Administration Officer will collect all these copies at the start of the hearing. [S]he will then distribute them at the hearing when each person is called on to present his or her submission and evidence.

A board for the display of large maps, charts, etc will be provided, as well as a laptop and projector. If small charts and photographs or slides are to be presented, enough identified copies should also be made for each Committee member, one copy for Council records and one copy to be circulated amongst the parties at the hearing.

The Council does not usually require witnesses to take an oath before giving evidence, but all evidence should nevertheless be the whole truth. A witness may be required to take an oath if past facts of importance are in dispute, and anyone

attending the hearing as an interpreter will be required to take an interpreter's oath or affirmation.

Witnesses usually present their evidence from their own prepared script. A witness may ask that someone else present his or her evidence. If the Chairperson agrees to this, the witness must confirm the contents are his or her own evidence and be willing to answer questions. A witness may add to his or her prepared statement, but this is usually limited to comment on matters that arise in the course of the hearing. When evidence is being read from written material, any personal interpretation or comments should be clearly indicated to be that person's own addition, and not part of the written evidence.

Any submissions made on applicable case law should be submitted in writing, with the citation of the relevant decision referred to. The person making such a submission should also have a copy of the decision available.

It is usual practice for legal counsel to stand while making submissions, but everyone else may stay seated while speaking.

Submitters to an application must restrict their evidence to support of the grounds stated in their written submission.

An applicant may make a submission on the costs of the hearing. Although the Council will usually recover the full costs of hearing and deciding an application from the applicant, there may be exceptional circumstances where such recovery may be unjust.

4.10 What procedure is followed at Council hearings?

Although the Chairperson of the Committee may vary the procedure, generally hearings will follow a set procedure.

To start the hearing, the Chairperson of the Committee will call the hearing to order. The Senior Consents Administration Officer or Chairperson will read out the application(s) to be heard.

The Chairperson will introduce himself or herself, Committee members and all Council officers present. Those persons wishing to participate in the hearing will be invited to introduce themselves and any counsel or witnesses they have asked to attend, in the order given in the agenda. The Chairperson will then outline the procedure that is to be followed at the hearing.

The applicant then submits and explains his or her application. The applicant should make his or her full case at this time.

The applicant may also make a submission as to costs. [S]he may submit reasons why full cost recovery for the hearing should not be charged to him or her, due to certain exceptional circumstances.

When the applicant has finished speaking and calling evidence, the Chairperson will invite the Committee members to ask the applicant any relevant questions. If a party

does not understand something the applicant has said, [s]he should ask the Chairperson to clarify the matter.

Submitters will then be asked to present their cases. A submitter must give reasons why [s]he:

- objects to or supports the application;
- thinks the application should be varied or declined; or
- wants special conditions attached to the application.

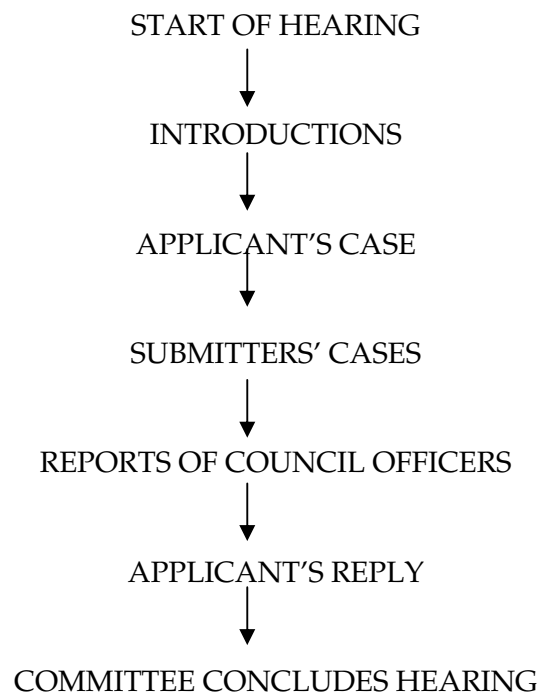
As each submitter has finished speaking and calling evidence, the Chairperson will invite the Committee members to ask the submitter any questions. If a party does not understand something a submitter has said, [s]he should ask the Chairperson to clarify the matter.

Regional Council officers then present their reports and summarise them. They may comment on any points raised by the applicant or submitters.

Next, the applicant may briefly reply to any matters raised by submitters or the Council officers.

The Chairperson will then conclude the hearing, and the Committee will withdraw to consider all it has heard in private, and complete its report and recommendations.

The procedure followed can be summarised as:



The Committee also has the power to **adjourn** or **re-convene** the hearing. An **adjournment** is when the Committee decides to postpone the hearing part way

through. This may happen if the Committee wants more information on a point raised at the hearing, or wants to discuss a matter in private.

After a hearing has ended, the Committee may **re-convene** the hearing if it requires more information or comment on a point of importance. Any further information received by the Committee will be disclosed to all parties, who will be given an opportunity to assess and comment upon the information. The Committee will let all parties know when they must come back to continue the hearing, and will tell them what procedure is to be followed.

4.11 What is a combined hearing?

A combined hearing may be held if two or more applications about the same proposal have been made to the Regional Council. If the Council decides to hold a hearing for those applications, it may hear them together.

4.12 What is a joint hearing?

A joint hearing may be held if applications about the same proposal have been made to both the Regional Council and another consent authority, usually a district council. A joint hearing enables the authorities to hear and consider, all the issues raised by the applications at the same time.

Authorities that jointly hear applications may make a joint decision on them and issue separate decision reports. Even if a joint decision is made, separate consents will be issued to the applicant from each authority.

A joint hearing will not be held if the applications are not sufficiently related and the applicant does not want a joint hearing. However, a joint hearing should speed up consideration of the applications and lower the applicant's costs.

5. Decisions

5.1 What factors does the Committee consider?

When making a decision, the Committee must consider:

- the purpose and principles of the Resource Management Act 1991 [Appendix 1];
- all information received or requested by it;
- regional and district plans and policies;
- any national or regional policy statement;
- any water conservation order;
- any national environmental standards and
- other relevant Acts and regulations.

The Committee **cannot** take into account:

- the effect of trade competition on trade competitors; and

- impacts on a person who has given written approval of the application.

A range of conditions may be attached to the consent, including requirements for a financial contribution, bond, covenant or administrative charge.

5.2 Who makes the final decision?

The hearing committee or commissioner will have delegated to make the final decision on the Council's behalf. It will issue a written decision that includes:

- (a) the reasons for the decision;
- (b) the relevant statutory provisions that were considered by the consent authority;
- (c) any relevant provisions of the following that were considered by the consent authority:
 - (i) any national policy statement;
 - (ii) the New Zealand coastal policy statement;
 - (iii) any regional policy statement;
 - (iv) any proposed regional policy statement;
 - (v) any regional plan;
 - (vi) any proposed regional plan;
- (d) the principal issues that were in contention;
- (e) a summary of the evidence heard;
- (f) the main findings of fact; and
- (g) 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.

5.3 Does the Hearing Committee always make the final decision?

If the Council, in a specific case decides not to delegate the power to make a final determination to the Hearing Committee, the committee will make a recommendation to the Council for a final decision.

5.4 How will I know what was decided?

A copy of the final decision and reasons is given to the applicant and every submitter. A summary of the decision is given to any other persons or authorities as the Council thinks appropriate and the Council may publicly advertise the decision. The full text of the decision will be available for public inspection at the Regional Council offices.

5.5 How can I appeal against the decision?

Any applicant or submitter who is dissatisfied with all or any part of the decision may lodge an appeal to the Environment Court within 15 working days of receiving notice of the decision. Where a joint decision was made, the authority that issued the resource consent appealed against will be the authority that must respond.

The Environment Court generally re-hears the entire matter, but will have regard to the Council's decision. The decision of the Environment Court can be appealed against to the High Court on points of law and [by leave] to the Court of Appeal.

Anyone who wishes to appeal to the Environment Court should immediately seek legal advice, as it is not the Council's role to give such advice or help.

A court fee is required to lodge an appeal and the Environment Court may award costs against any party if certain criteria are not met.

6. Where can I get further information about Council hearings?

The staff of the Regional Council can offer further guidance if you have any questions not answered in this guide. The Council's address is:

Taranaki Regional Council
Private Bag 713
Stratford

Telephone: (06) 765 7127
Fax: (06) 765 5097
Website: www.trc.govt.nz

Ministry for the Environment also have a number of resources about Hearings under the Resource Management Act [Available online at www.rma.govt.nz]:

- An everyday guide to the RMA [2006] – an interactive guide to the RMA [CD] and 13 guides, including:
 - Getting in on the Act
 - Resolving Resource Management Act Concerns
 - Applying for a Resource Consent
 - Consultation for Resource Consent Applicants
 - Your Rights as an 'Affected Person'
 - Making a Submission on a Resource Consent
 - Appearing at a Resource Consent Hearing
- Your Guide to the Resource Management Act: An essential reference for people interested in the RMA [2006]

Appendix I

Purposes and principles of the Resource Management Act 1991

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 recognized customary activities.

7. Other matters

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

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

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].