

How to Run a Resource Management Case

INTRODUCTION	John Milligan	1
The purpose of this introduction		1
A comparison of jurisdictions		1
"Opinion evidence"		2
Plan submissions and consent applications		3
Local authorities and the Environment Court		3
CHAPTER 1: LOCAL AUTHORITY HEARINGS – John Milligan		5
THE INITIAL STEPS		
Introduction		5
Gaining an overview		6
<i>The importance of an overview</i>		6
The sustainable management of <i>financial</i> resources		7
Analysis of the relevant plans		8
<i>The rules</i>		8
<i>The objectives, policies and other provisions</i>		11
The role of lawyers – and other experts		12
<i>Legal expertise</i>		13
<i>Non-legal "representation" and the problem of credibility</i>		14
<i>Planning expertise and local authority hearings</i>		14
<i>The central question</i>		15
The application / submission		16
<i>The application</i>		16
<i>The Assessment of Environmental Effects (AEE)</i>		18
Consultation – and dispensing with notification		21
<i>Whether, and with whom</i>		21
<i>Consultation and non-notification</i>		22
CHAPTER 2: LOCAL AUTHORITY HEARINGS - John Milligan		24
THE APPEARANCE		
A general comment		24
The "Proper" Approach		25
The briefing of "evidence"		26
<i>Keeping experts in the loop</i>		26
<i>Important points</i>		26
"Legal submissions"		29
Conduct during the hearing		30
The reply		30
<i>Where a reply is called for</i>		30
CHAPTER 3: THE WORK OF THE ENVIRONMENT COURT	Judge Gordon Whiting	33

Its constitution	33
Its work	33
Its role	33
Its increased powers under RMA	34
The difference between an appeal and a reference	34
<i>Appeals</i>	34
<i>References</i>	35
<i>Other forms of proceedings</i>	35
CHAPTER 4: THE FILING OF AN APPEAL / Judge Gordon Whiting	36
REFERENCE	
Status to appeal	36
<i>Appeals</i>	36
<i>References</i>	36
Receiving instructions	36
<i>Check list for obtaining instructions</i>	37
Assessing chances of success	37
<i>General</i>	37
<i>Status of activity</i>	37
<i>Statutory instruments</i>	38
<i>District plan</i>	38
<i>Regional plans and national instruments</i>	38
<i>The effects of the proposal</i>	38
<i>The Act</i>	39
Time for lodging appeals or references	39
Form of appeal/reference	40
<i>Form of appeal</i>	40
<i>Form of reference</i>	40
<i>Relief</i>	40
Justiciable relief	41
<i>Appeal</i>	41
<i>Reference</i>	41
Grounds for appeal or reference	43
<i>Check list</i>	43
Annexures	44
Filing of appeals or references	44
Waivers and discretion	45
<i>Waiver of time for appeal</i>	46
Waiver of service of annexure	46
Costs	47
Section 125 RMA	47
Practice note	47
<i>Procedural issues</i>	48

<i>Environment Court's approach in awarding costs</i>		48
<i>Underlying principles and check list</i>		50
SUMMARY	Judge Gordon Whiting	52
The filing of the appeal		52
<i>Status to Appeal</i>		52
Receiving instructions		52
<i>Assessing chances of success</i>		52
<i>Regional plans and national instruments</i>		52
<i>Effects of the proposal</i>		52
<i>Time for lodging appeal</i>		53
<i>Form of appeal / reference</i>		53
<i>Justiciable relief</i>		54
<i>Appeal</i>		54
<i>Reference</i>		54
<i>Grounds for appeal and reference</i>		54
<i>Annexures</i>		55
<i>Filing</i>		55
<i>Waiver and discretions</i>		55
<i>Costs</i>		57
<i>Principles</i>		57
CHAPTER 5: A HEARING IN THE ENVIRONMENT COURT	John Hardie	58
A. Hearing de novo		58
B. Order of case presentation		59
C. Mediation		59
D. Exchange of evidence - rebuttal evidence		60
<i>Rebuttal evidence:</i>		62
E. Opening submissions		62
<i>What is good practice in relation to an opening submission?</i>		63
F. Evidence-in-chief		64
G. Exhibits		65
H. Cross-examination of experts		67
1. <i>The common knowledge rule</i>		67
2. <i>The field of expertise rule</i>		67
3. <i>The ultimate issue rule</i>		67
4. <i>The basis rule</i>		69
I. Closing address		70
APPENDIX A - Resource Management Act - Form 7		71
APPENDIX B - Resource Management Act - Form 4		72
APPENDIX C		73