

PRESENTERS



Principal Environment Judge Laurie Newhook, Auckland

Appointed as Environment Judge in August 2001, Acting Principal Environment Judge in 2011 and Principal Environment Judge in 2014, Judge Newhook graduated from Auckland University with an LLB(Hons) in 1972 and was admitted to the Bar the same year. From 1976 he was a partner of law firm Brookfields and antecedent firms. He practised in resource management, local government and general litigation. The general litigation component had an emphasis on land, maritime matters, construction law and mediation/arbitration work. In the areas of planning, resource management and local government he acted for councils, landowners, developers, iwi, community groups and environmental groups. The Judge is an Associate of the Arbitrators and Mediators Institute of New Zealand and a member of the Resource Management Law Association.



Bill Loutit, Partner, Simpson Grierson, Auckland

Bill heads the resources and infrastructure department. He is a leading litigator and an expert in alternative dispute resolution in the administrative law, environmental, resource management, and local government fields. He advises local authorities, corporates and developers and has had numerous appearances before the Environment Court, the High Court, the Court of Appeal, and the Supreme Court. He has been involved in many of the 'landmark' environmental cases in New Zealand which have shaped how the country's environmental legislation is administered.



Marie Dysart, Environment Canterbury, Christchurch

Marie is a resource management practitioner with Environment Canterbury. She has represented the council on resource consent appeals, prosecutions, enforcement orders and declarations. She has appeared in all the appellate courts. Her current work includes topics of air and water quality and water use and allocation. Prior to studying law Marie was a science teacher.

The statements and conclusions contained in this booklet are those of the author(s) only and not those of the New Zealand Law Society. This booklet has been prepared for the purpose of a Continuing Legal Education course. It is not intended to be a comprehensive statement of the law or practice, and should not be relied upon as such. If advice on the law is required, it should be sought on a formal, professional basis.

PRESENTERS



Stephen Quinn, DLA Piper NZ, Wellington

Stephen is a resource management specialist who primarily acts for local authorities and central government. He regularly appears in the Environment Court, Board of Inquiries and the High Court on resource consent appeals, plan change appeals, notification judicial reviews, designations and enforcement matters.



Kitt Littlejohn, Barrister, Quay Chambers, Auckland

Kitt Littlejohn has practiced as a barrister specialising in resource management and local government law since 2000. He has conducted numerous consent and plan change hearings before local authorities and the Environment Court, both for applicants and submitters. Kitt is an accredited Independent Commissioner and has Chaired hearings for local authorities in the Auckland Region for 10 years.

Cover and text stocks used in this publication are from Forestry Stewardship Council certified mills, manufactured under the environmentally responsible paper manufactured environmental management system ISO 14001, using pulp from well managed forests and other controlled sources.

CONTENTS

INTRODUCTION	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 – THE INITIAL STEPS.....	5
INTRODUCTION	5
GAINING AN OVERVIEW	6
ANALYSING A PLAN	6
<i>Rules</i>	7
<i>Objectives, policies and other provisions</i>	7
<i>Other provisions</i>	8
THE “ENVIRONMENT”	8
DEVELOPING A STRATEGY	9
CONSIDERING RESOURCING	10
THE CHANCES OF SUCCESS/BEING REALISTIC	10
IDENTIFYING THE IDEAL CONSENTING AVENUE.....	11
THE ROLE OF LAWYERS – AND OTHER EXPERTS	11
THE APPLICATION	12
<i>The assessment of environment effects (AEE)</i>	13
NOTIFICATION	13
CONSULTATION	14
DISPENSING WITH NOTIFICATION	14
PLAN CHANGES	14
ACTING FOR SUBMITTERS	15
CHAPTER 2: LOCAL AUTHORITY HEARINGS - THE APPEARANCE.....	17
GENERAL COMMENT	17
LOCAL DIFFERENCES.....	18
THE “PROPER APPROACH”	18
HEARING PREPARATION	19
<i>General</i>	19
<i>Review of submissions</i>	20
<i>Other new information</i>	20
<i>Briefing of witnesses</i>	20
<i>Circulation of evidence and implications</i>	22
<i>Other matters</i>	22
CONDUCT DURING HEARING	23
<i>Preliminary matters</i>	23
<i>Opening and legal submissions</i>	23
<i>The reply</i>	24
CHAPTER 3: THE WORK OF THE ENVIRONMENT COURT	27
ITS CONSTITUTION	27
ITS FUNCTION.....	27
ITS STRUCTURE AND PROCESSES	28
ENVIRONMENT JUDGES	28
ENVIRONMENT COMMISSIONERS	28
LOCATIONS	28
APPROACHABILITY AND EFFICIENCY	29
THE ENVIRONMENT COURT PRACTICE NOTE.....	29
PARTIES IN THE CASES	30
CASE MANAGEMENT BY THE JUDGES	30
JUDICIAL CONFERENCES	30
THE ROLE OF EXPERT WITNESSES	31
RECENT INNOVATIONS IN THE ENVIRONMENT COURT	31

ELECTRONIC INNOVATIONS.....	32
<i>iPads</i>	32
<i>Interactive use of the Court’s Website</i>	32
APPEALS ON POLICY STATEMENTS, PLANS, CONSENT APPLICATIONS; ENFORCEMENT PROCEEDINGS; AND ALTERNATIVE HEARING MODELS FOR POLICY STATEMENTS AND PLANS	33
CHAPTER 4: THE FILING OF AN APPEAL	35
APPEALS	35
<i>General</i>	35
<i>Local differences</i>	35
STATUS TO APPEAL	35
RECEIVING INSTRUCTIONS	36
<i>Assessing the client’s proposal</i>	36
<i>Understanding the facts</i>	36
<i>Checklist for obtaining instructions</i>	37
PRINCIPLES OF LAW	37
<i>Status of activity</i>	37
<i>Statutory instruments</i>	38
<i>District and regional plans</i>	38
<i>Hierarchy of statutory instruments</i>	38
<i>Implementation of Part 2</i>	39
<i>Effects of the proposal</i>	41
ASSESSING CHANCES OF SUCCESS	42
DRAFTING THE NOTICE OF APPEAL	42
<i>The forms</i>	42
<i>Grounds for appeal</i>	42
<i>Justiciable relief</i>	43
FILING THE APPEAL	43
ANNEXURES.....	44
SERVICE OF THE APPEAL	44
SECTION 274 PARTIES	45
WAIVERS AND DIRECTIONS	45
OTHER COUNCIL DECISIONS THAT CAN BE APPEALED	46
CHAPTER 5: MEDIATION AND CONFERENCING.....	47
INTRODUCTION	47
<i>Alternative Dispute Resolution in the Environment Court (primarily mediation)</i>	47
MEDIATION	48
<i>The Practice Note</i>	48
<i>How to conduct a mediation</i>	48
CONFERENCING	51
<i>Practice Note</i>	51
<i>The role of the lawyer</i>	51
CHAPTER 6: A HEARING IN THE ENVIRONMENT COURT	55
HEARING DE NOVO.....	55
ORDER OF CASE PRESENTATION	56
EXCHANGE OF EVIDENCE AND REBUTTAL EVIDENCE	56
ADDITIONAL EVIDENCE.....	57
REBUTTAL EVIDENCE.....	58
EXHIBITS/PLANNING DOCUMENTS/AUTHORITIES.....	59
MOVE TO AN ELECTRONIC COURT	59
OPENING SUBMISSIONS	60
WHAT IS GOOD PRACTICE IN RELATION TO AN OPENING SUBMISSION?	61
PRESENTATION OF EVIDENCE	61
CROSS-EXAMINATION OF EXPERTS.....	62
1 <i>The common knowledge rule</i>	62
2 <i>The field of expertise rule</i>	62
3. <i>The ultimate issue rule</i>	62
4. <i>The basis rule</i>	63
HOW DO YOU CROSS-EXAMINE EXPERT WITNESSES?.....	63

CLOSING ADDRESS	64
COSTS	64
CASE LAW	65