Environment Court of New Zealand

Te Kōti Taiao o Aotearoa

Practice Note 2023

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1. Status of this Practice Note

(a) This is a guide to practice in the Environment Court with effect from 1 January 2023. This practice note replaces all earlier practice notes.

(b) This practice note does not have the status of rules but its contents are normally to be followed unless there is good reason to do otherwise in the particular circumstances of any case.

(c) The Court has broad discretionary powers in relation to procedure and evidence. The Managing Judge in any proceeding may exercise those powers instead of or in addition to anything in this practice note where that is necessary or desirable in the particular circumstances of any case.

(d) This practice note is subject to any protocols or directions issued in times of emergency:

  i. by the Chief Justice for the operation of New Zealand courts; or

  ii. by the Chief Environment Court Judge for the operation of the Environment Court.

(e) References to the Act are to the Resource Management Act 1991 unless stated otherwise.

(f) References to Regulations are to the Resource Management (Forms, Fees, and Procedure) Regulations 2003 unless stated otherwise.

(g) References to Rules are to the District Court Rules 2014 (which may apply under s 278(1) of the Act) unless stated otherwise.

(h) This practice note does not apply to any proceeding in the District Court, including any prosecution of an offence under s 338 of the Act.

(i) This practice note, together with other information about the Court, is available on the Court's website at

http://www.justice.govt.nz/courts/environment-court

2. Glossary of terms used in this Practice Note

Draft consent order: a draft order, with a memorandum of all parties in support of it, presented to the Court which contains the terms and conditions on which the parties have agreed to resolve a proceeding, or part of a proceeding, already before the Court.

Consent order: a draft consent order that has been endorsed by the Court and issued to the case parties.

Counsel: a lawyer engaged to advise and represent a party in a proceeding before the Court.

Direct referral: an application for resource consent or other application or a notice of

requirement which has been directly referred to the Court for hearing and decision rather than being first heard and decided by a consent authority.

Managing Judge: the Environment Judge who, for the time being, has the particular proceeding on their case management docket and is managing its progress towards resolution.

Section 274 party: a person or organisation, other than the applicant, the appellant or the consent authority, who or which gives notice under s 274 of the Act of an intention to be a party to the proceeding before the Court.

Statutory planning document: Documents having regulatory effect under the Act, including a national policy statement, a national environmental standard, a national planning standard, a regional policy statement, a regional coastal plan, a regional plan or a district plan.

Working day: a day of the week other than—

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki / Matariki Observance Day, and Labour Day; and

(b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

(c) a day in the period commencing on 20 December in any year and ending with 10 January in the following year.

3. Communication

3.1. Communicating with the Court

(a) Any communication on any matter relating to a proceeding before the Court must be made in writing addressed to the Registrar or to the assigned case, hearing or ADR process manager unless it is made in open court or at a conference.

(b) Communication may be by e-mail.

(c) Any communication relating to a proceeding must be copied to all other parties to the proceeding at the same time as it is sent to the Court.

(d) Any communication requesting any action or direction must begin with a clear statement of what is sought and the grounds for the request.

(e) Any application for an interlocutory order to be made by the Court must be in the form required by Regulation 25.

(f) It is generally inappropriate to communicate with the Court after a hearing has finished and before the Court issues its decision.

3.2. Communication and co-operation among parties

(a) Every counsel has a duty as an officer of the Court to work respectfully, constructively and professionally with other counsel to ensure that case management objectives are achieved.

(b) Counsel and other professional advisors have a duty to keep their clients informed of possible solutions to issues and of alternatives to litigation that are reasonably available.

(c) All parties and their representatives and witnesses are expected by the Court to work respectfully and constructively with other parties, their representatives and their witnesses at all stages of a proceeding to promote its fair, timely and cost-effective resolution.

3.3. Access to documents

(a) Applications for access to court documents are to be made in accordance with the District Courts (Access to Court Documents) Rules 2017.

4. Lodging a proceeding

4.1. Notices must contain particulars

(a) Every notice of appeal or application commencing a proceeding must:

i. clearly identify the specific decision which is the subject of the proceeding;

ii. give full and clear particulars of the grounds or reasons relied on; and

iii. give precise details of the relief sought.

(b) If any notice of appeal or application lodged with the Court does not contain those particulars or otherwise does not comply with the requirements of the Act or the Regulations, the Registrar will record the document as having been received subject to any non-compliance being rectified and will advise the person who lodged the document and any other known party accordingly.

(c) In advising of the conditional receipt of such a notice or application, the Registrar will notify the person lodging the document of any action that may be required to rectify the non-compliance and specify a time (normally within 5 working days) for that to be done.

(d) If any required amendment is made within the specified time, the Registrar will record the document giving rise to the amendment as having been received on the date of receipt of that document.

(e) If any required amendment is not made within the specified time, the Registrar will refer the matter to a Judge to consider whether to grant a further extension of time to do so or to strike out the proceeding under s 279(4) of the Act or to take or require some other action.

4.2. Waiver of time limits for lodging appeals

(a) If a notice of appeal is presented for lodging after the expiry of the relevant time limit for doing so under the Act, the Registrar will record the notice as having been received out of time and subject to a waiver of the time limit being granted by a Judge, and will advise the intending appellant and any other known party accordingly.

(b) In advising of the conditional receipt of such a notice, the Registrar will notify the time by which any application for a waiver of the time limit must be made (if an application has not already been made) and also the time by which any notice of opposition to such a waiver must be lodged.

(c) If an intending appellant is aware that a notice of appeal will be presented or served late, an application for a waiver of the time limit in Form 38 of the Regulations should be filed with the notice.

(d) If written consents to the waiver of time from all other parties are lodged with the notice of appeal, such a waiver will normally be granted. Otherwise the Court will need to be satisfied under s 281 of the Act that:

i. none of the parties to the proceeding will be unduly prejudiced; and

ii. the appellant or applicant and the respondent consent to that waiver or will not be unduly prejudiced.

(e) The Registrar and Deputy Registrars have delegated authority to approve waivers of time for lodging appeals where:

i. the lodging of the notice is not more than 5 working days late;

ii. the other known parties to the appeal do not oppose the waiver; and

iii. it is apparent that no undue prejudice will arise.

4.3. Time limits for lodging documents generally

(a) Any statutory or Court-directed time limit for the filing of a document or the taking of any step in a proceeding expires at 5:00pm on the working day in question, unless the Court directs otherwise.

(b) Any document sent to the Court by electronic means, including by e-mail, shall be deemed, in the absence of proof to the contrary, to be filed with the Court within a working day if it is received by the Registry before 5:00pm on that working day.

(c) If any directed time limit is not complied with, the Registrar will refer the matter to a Judge to consider whether:

i. to extend that time limit on the Judge's own motion; or

ii. to require an application to extend that time limit on notice to all other parties; or

iii. to strike out the appeal or proceeding under s 279(4) of the Act.

(d) The Registrar or a Deputy Registrar may grant a waiver where a notice to become a party under s 274 of the Act is lodged no more than 5 working days after the time limit in s 274(2) and there is no opposition to a waiver and there is no apparent undue prejudice to any party.

(e) On appeals relating to decisions on submissions on a statutory planning document, any person may apply for a general extension of time for all persons filing notices to become a party under s 274 where the number of appeals or their complexity make this appropriate.

4.4. Multiple appeals relating to the same subject-matter

(a) The Court is required under s 270 of the Act to hear together proceedings relating to the same subject-matter unless that is impractical, unnecessary or undesirable, and so will normally:

i. defer hearing an appeal in respect of a resource consent until any other relevant decision of any consent authority on any related resource consent has been given; and

ii. manage and hear together appeals if more than one appeal is lodged:

1. in respect of a decision on a resource consent or notice of requirement; or

2. on decisions on more than one resource consent or notice of requirement relating to the same proposal; or

3. on the same provision or related provisions in a proposed policy statement or plan.

5. Case management

5.1. Objectives of case management

The objectives of case management by the Court are:

(a) to promote the purpose of the relevant legislation in any proceeding;

(b) to regulate its proceedings in a manner that best promotes their timely and cost-effective resolution;

(c) to conduct its proceedings without procedural formality where this is consistent with fairness and efficiency;

(d) to recognise tikanga Māori;

(e) to ensure the fair treatment of all parties and the just resolution of all proceedings;

(f) to improve the quality of the litigation process and its outcomes;

(g) to maintain public confidence in the Court; and

(h) to use available judicial, legal, evidential, and administrative resources as efficiently as practicable.

5.2. Essential features of case management

The essential features of case management are:

(a) early identification of the issues in dispute and appropriate processes to narrow those issues;

(b) encouragement of settlement by direct negotiation or the use of alternative dispute resolution processes;

(c) planning the course and timing of events in the proceeding;

(d) reducing the number and extent of interlocutory processes;

(e) direct supervision of complex cases through conferences at critical points and making timetabling directions for specific actions by parties, including the reporting of outcomes;

(f) monitoring achievement of events as timetabled to make orderly progress, to facilitate parties' preparation, and to encourage prompt consideration of opportunities for settlement wherever possible; and

(g) using appropriate sanctions, such as orders for costs, where parties fail to comply with directions without reasonable excuse.

5.3. Case management tracks

(a) Every case lodged with the Court is assessed by a Judge for assignment to a case management track and all parties are advised of that assignment together with any preliminary directions of the Judge.

(b) A case may be transferred from one track to another where the circumstances of the case warrant it either on the Court's initiative or on the application of a party.

(c) Cases that do not require special procedural attention are assigned to a **Standard Track** and are subject to standard case-management steps which normally include:

   i. an opportunity for Court-assisted ADR processes as a first step;

   ii. a conference to identify the issues in the proceeding, discuss process or jurisdictional matters and identify any preliminary actions that need to be taken or determinations that need to be made;

   iii. the identification of any witnesses to be called at hearing, and their area of expertise;

   iv. the timetabling of procedural steps and the exchange of evidence, including obligations for providing bundles of evidence and documents to the Court;

   v. progress reporting to the Court;

   vi. any pre-hearing directions or rulings; and

vii. estimating the hearing time required and setting a hearing date.

(d) Cases that require priority attention may be assigned to a **Priority Track**. A case on the priority track is actively case managed by particular directions to achieve a resolution as soon as reasonably practicable in the circumstances of the case. Applications for interim enforcement orders or for declarations and applications referred directly to the Court will normally be placed on this track.

(e) Cases that do not require resolution in the ordinary course of the Court's business for a particular and identified reason may be assigned to the **Parties' Hold Track**. This requires the Court's agreement and normally the consent of all parties. Reasons for such assignment can include where other consents are required, or where the parties are negotiating a settlement, or where some other consent process or litigation needs to be completed before the matter can be considered by the Court. A standard direction will be made to provide a status report at regular intervals to ensure that the reason for the assignment remains valid.

(f) Case management time limits and other requirements will be fixed after consideration of parties' views and may be revised according to the circumstances of the case. Once a case management schedule is directed, the Court expects its deadlines and time limits to be met. Unexplained non-compliance or apparent delaying tactics may be the subject of directions or sanctions, including by an award of costs in any event or in the most serious cases by striking out the defaulter's case.

5.4. Conferences

(a) The purpose of a conference under s 267 of the Act is to pursue the objectives of case management in a manner that promotes the fair and efficient conduct of the proceeding.

(b) The Court expects every party to a proceeding to take a proactive approach in communicating with other parties to identify and seek to resolve procedural issues before seeking a conference or other form of assistance from the Court.

(c) Any party may request a conference about any matter listed in s 267(3) of the Act. Any request for a conference must state the particular matters proposed to be considered and any ruling or direction sought. The Court may direct that a conference be held and will identify the matters to be raised by it in the notice of the conference.

(d) Every party to a proceeding or their counsel or representative must attend a conference for that proceeding unless leave to be excused is granted.

(e) Every counsel or representative of a party at a conference must be thoroughly familiar with that party's position on any issue to be discussed at the conference.

(f) A conference may be held in court or in chambers or by telephone or online. If necessary, a combination of in-person or remote methods of attendance may be

directed.

(g) A single conference may be held in relation to related proceedings and the provisions of this Practice Note for conferences apply to those with any necessary changes.

5.5. Recognition of tikanga

(a) As part of case management the Court will endeavour to recognise tikanga in every case by consulting parties during conferences. Parties are requested to assist the Court to identify relevant tikanga for tāngata whenua or the venue of the hearing or any issue in the proceeding, including appropriate provision for:

i. Using te reo Māori under s 7 of Te Ture mō Te Reo Māori 2016 – the Māori Language Act 2016, including for:

1. mihi and giving evidence;

2. making available interpreters and translation services; and

3. the extent to which Rules 1.15 – 1.18 may apply;

ii. Conducting karakia at the commencement and conclusion of a hearing or any part of a hearing;

iii. Holding hearings, in whole or in part, on marae and working with tāngata whenua to ensure that kawa and tikanga are observed while recognising the role of the Court in conducting hearings;

iv. Arranging conferencing of expert witnesses on cultural matters;

v. Arranging site visits, especially to wāhi tapu;

vi. Including on the Court which hears a proceeding a Judge of the Māori Land Court who holds a warrant as an alternate Environment Judge.

5.6. Remote participation

(a) As part of case management the Court will address the extent to which and the manner in which a proceeding may be conducted remotely under the Courts (Remote Participation) Act 2010 or otherwise, including:

i. For any conference;

ii. For any ADR process;

iii. For any expert conference;

iv. For all or any part of a hearing, including receiving evidence from a witness who is not present in court;

v. Requirements for notice where a party intends to participate remotely or to call a witness who cannot be present in court;

vi. Requirements for the place where a witness is giving evidence remotely;

vii. Requirements for the conduct of a witness who is giving evidence remotely, including that they will not communicate with any person outside the audio-visual link while giving evidence and will not refer to any document or information source except the documents or information sources being used by the Court in the course of giving evidence; and

viii. Methods to enable a remote party or witness to refer to exhibits, including exhibits that have not been circulated prior to the hearing.

5.7. Electronic casebooks

(a) The Court encourages the use of electronic casebooks wherever practicable and will address their use in any proceeding at a conference.

(b) Where the Court directs that an electronic casebook be provided, parties to a proceeding must consult one another about and collaborate on the provision of an electronic casebook for use in the hearing of that proceeding.

(c) Parties should follow the guidelines in either:

i. the Senior Courts Civil Electronic Document Protocol 2019 (amended 16 September 2021); or

ii. the Employment Court of New Zealand Electronic Casebook Protocol;

making such changes as may be necessary to suit a proceeding in the Environment Court.

(d) The Chief Environment Court Judge may issue additional practice notes from time to time dealing with particular aspects of electronic casebooks for use in proceedings before the Environment Court.

5.8. Setting down a proceeding for hearing

(a) The Court is required under s 272 of the Act to hear and determine every proceeding as soon as practicable after the date of its lodgement unless, in the circumstances of a particular case, it is not considered appropriate to do so.

(b) The Registrar may issue a notice of hearing as soon as the case management timetable for that proceeding has been completed and the Court's schedule allows.

(c) If there is any reason why the hearing of a proceeding should be deferred, the Registrar should be informed as soon as that reason is known.

(d) The Court will not normally defer the hearing of an appeal against the grant of a resource consent if the applicant for that consent opposes it.

5.9. Priority hearings

(a) The Court normally hears proceedings in the order in which they were commenced and are ready for hearing.

(b) If a party seeks an early hearing for a proceeding which has not been placed on the Priority case management track, an application on notice for a priority fixture

may be made, supported by:

i. a memorandum setting out the reasons for the application, when the proceeding will be ready for hearing and the likely duration of the hearing; and

ii. affidavit evidence which may be relevant to determining whether priority should be granted.

(c) Relevant considerations in relation to an application for priority may include:

i. why the proceeding should be heard in priority to other proceedings;

ii. what public interest element of the proceeding would support priority; or

iii. whether, because of the circumstances of the particular case, there is a need for priority (for example, where awaiting the case's normal turn would negate the point of the proceedings).

(d) Where there are competing applications for the same resource, the Court will normally hear and decide appeals against decisions in the same order as the consent authority heard the applications.

5.10. Adjournments

(a) If a party seeks an adjournment after a notice of hearing has been issued by the Court, an application on notice for adjournment must be made supported by:

i. a memorandum setting out the reasons for the application; and

ii. affidavit evidence which may be relevant to determining whether an adjournment should be granted.

(b) An adjournment application may not be granted even if all other parties consent to it.

(c) If an adjournment is sought at a late stage and after the Court has incurred direct expenses in hearing arrangements, the Court may grant the application and order payment to the Crown of the costs incurred by the Court under s 285 of the Act.

5.11. Consent Orders

(a) Where any proceeding is to be resolved by consent the parties must notify the Registrar as soon as that course of action is reasonably certain.

(b) Where a proceeding is resolved by an agreement between the parties that includes a proposal to ask the Court to make an order by consent, the parties must prepare and file a memorandum and a Draft Consent Order to be referred to a Judge. The memorandum must set out the relevant grounds for making the Draft Consent Order and confirm that any agreed amendments to a resource consent or policy statement or plan or designation are within the scope of the Court's jurisdiction and satisfy any relevant considerations under the Act and any relevant statutory planning document. If evidence is required to support the grounds for making the

Draft Consent Order, then that should be provided in affidavit form.

(c) Refer to section 10.4 of this Practice Note for the provisions relating to the presentation of draft conditions of a resource consent or a designation. These provisions apply also to any proposed conditions to be imposed by a draft consent order.

(d) From time to time the Chief Environment Court Judge may issue a general direction as to the form in which parties should present requests for draft consent orders to the Court. The direction will be posted on the Court's website.

(e) In considering a request to make a consent order, the Court will have regard to:

i. the scope of its jurisdiction under relevant legislation;

ii. the scope of the proceeding in which the order is proposed to be made; and

iii. the relevant considerations under any legislation and any statutory planning document.

(f) A consent order will not be made merely on the ground that the parties agree to it.

(g) A Judge may convene a conference or hold a hearing to address any issue that arises in relation to the proposed draft consent order.

5.12. Withdrawal of proceedings

(a) Where any proceeding is to be withdrawn in whole or in part, the parties must notify the Registrar as soon as that course of action is reasonably certain.

(b) The withdrawal of a proceeding in whole or in part does not require leave of the Court.

(c) Where a party withdraws their proceeding:

i. They must give notice of that withdrawal to the Court and to all other parties;

ii. The other parties to that proceeding may apply for costs on the withdrawal and the Court retains jurisdiction under s 285 of the Act to consider and determine any such application; and

iii. Any other party who wishes to continue that proceeding must give notice to the Court and to all other parties that they oppose the withdrawal of the proceeding within 5 working days of receipt of the notice of withdrawal and the Court will convene a conference to make directions for the resolution of the issue.

6. Direct referrals

6.1. Separate procedures from standard appeals

(a) An application for resource consent which is directly referred to the Court by a consent authority under ss 87C–87I of the Act or a matter which is referred to the Court by the Minister under Part 6AA of the Act will be managed separately from other proceedings given their separate statutory procedures and their scale.

(b) A submitter on a directly referred application or matter must lodge their submission with the Court under s 274 of the Act in Form 33 of the Regulations whether or not they previously made a submission on the application or matter to the consent authority or the local authority.

(c) A submitter to the consent authority or the local authority who does not give notice to the Court under s 274 of the Act will not be a party to the proceeding and so will not receive any notices or other communications from the Court, other than receiving a copy of the Court's decision, determination or order following the conclusion of the matter.

6.2. Managing large numbers of parties

(a) A direct referral process leads to a first instance hearing before the Court rather than before a consent authority or local authority. There are often many more parties to a directly-referred application than to appeals from decisions of consent authorities or requiring authorities. Many submitters on a directly-referred application may be unrepresented and have little or no experience of Court practice and procedures.

(b) The Court will make directions in light of those matters to move the directly-referred application forward efficiently, which may include:

   i. appointing one or more process advisors to assist submitters with advice about the Court's practice and procedures, but not to give advice about matters of law applicable to the substantive proceedings or matters of expert evidence that may be relevant to the issues of the case;

   ii. communicating and exchanging documents by electronic means wherever possible; and

   iii. encouraging submitters to group together and act jointly in retaining counsel and calling evidence.

6.3. Pre-lodgement directions and waivers

(a) Where an applicant, requiring authority, consent authority or local authority anticipates that large numbers of submitters may be involved in a directly-referred application or matter and that compliance with the standard requirements of the Act for service of documents may be impractical, the Court may make directions and grant waivers to the applicant in relation to such matters prior to the referral

of the application to the Court.

(b) Where any such pre-lodgement directions or waivers are made, leave will be reserved for any person who later becomes a party to the proceeding to apply to vary any such direction or waiver.

(c) An applicant or requiring authority who seeks any such pre-lodgement direction or waiver is in essentially the same position as an applicant seeking *ex parte* orders in the general courts and is therefore under a duty of candour to inform the Court, accurately and transparently, of any relevant consideration relating to the making of such a direction or waiver including any consideration which is adverse to the application or matter.

6.4. Recovery of costs of a directly-referred application

(a) There is a presumption under s 285(5) of the Act that the Court will order the applicant in a direct referral process to pay to the Crown the costs and expenses incurred by the Court in conducting the hearing of the application.

(b) Such costs and expenses can include the costs associated with case management such as the appointment of process advisors, live streaming of the hearing, and so on.

(c) The Court will invite submissions from the applicant before any decisions are made about case management that may incur extraordinary costs or expenses.

(d) Where a direct referral has proceeded to a hearing, costs will not normally be awarded to any party in recognition of the participatory nature of first instance processes under the Act.

7. Alternative dispute resolution

7.1. Introduction

(a) The Managing Judge will normally refer a proceeding to some form of alternate dispute resolution (**ADR**) process (normally Court-assisted mediation) as a first step, subject to the agreement of the parties and any directions under s 268 of the Act.

(b) Where the Managing Judge does not consider an ADR process to be appropriate or an ADR process is not agreed to by the parties, the Court will convene a conference to make directions for the proceeding to go to a hearing.

(c) No fee is payable for a Court-assisted ADR process, but if an adjournment is sought at a late stage and after the Court has incurred direct expenses in making arrangements for an ADR process, the Court may grant the application and order payment to the Crown of the costs incurred by the Court under s 285 of the Act.

(d) Parties may agree to conduct any form of ADR process among themselves and without the assistance of the Court. Where that occurs, parties should advise the

Court of the time needed for that process and whether the proceeding should be placed on the Parties' Hold Track in the meantime.

7.2. Attendance and authority

(a) Where a proceeding is referred to an ADR process under s 268 of the Act, participation by all parties is mandatory under s 268A of the Act unless leave is granted by the Court not to participate.

(b) A party to a proceeding may apply to the Court for leave not to participate in the ADR process. The Court may grant leave if it considers that it is not appropriate for the party to participate in the ADR process.

(c) A party may be excused from attending an ADR process in person if, prior to the ADR event, they provide the Court with written advice that:

i. they agree to abide by any agreement reached in the ADR process; or

ii. their interests will be represented by a person who has authority to settle on their behalf; or

iii. they have no interest in the matters to be the subject of the ADR process.

(d) If a party does not have leave not to participate or refuses or fails to attend the ADR process, any other party may apply for that party to be struck out or be able to participate only on terms set by the Court.

(e) Each party in an ADR process must have at least one representative participating in person who has authority to make decisions in that process on behalf of that party. Where the party is a company or other body corporate, the person must hold sufficient delegated authority to be able to settle the dispute on behalf of the body corporate.

(f) The attendance by any person representing a party at an ADR event is normally on the basis that the person has full authority from that party to settle. Any limitation of authority must be advised to all other parties to the ADR process and to the mediator or facilitator at least 10 working days prior to the ADR event unless otherwise agreed by all parties.

7.3. Obligations and practice

(a) The Managing Judge or the Registrar normally appoints an Environment Commissioner to act as the mediator or facilitator in the ADR process.

(b) A person who is not a member of the Court may also be appointed to act as the mediator or facilitator, subject to approval of that appointment by the Managing Judge and agreement between the parties and the Registrar as to who will pay the costs of that appointment.

(c) Direct negotiation, whether formal or informal, should always be considered by the parties. During all stages of a proceeding, the Court expects parties to continue to address the possibility of a negotiated settlement.

(d) Where agreement is not reached in an ADR process, the parties should use the time to narrow and, if possible, agree on the issues to be brought to the Court. This will facilitate focus and reduce the duration of a hearing.

(e) While an ADR process takes place, the proceeding may be placed on the parties' hold track or, if directed by the Managing Judge, the parties may be required to continue preparing for a hearing in parallel with the ADR process.

(f) The Court Registry will issue a notice of the ADR process to the parties. This notice is normally issued at least 15 working days ahead of the date for the ADR process depending on the availability of the mediator or facilitator.

(g) Parties must respond to that notice with the names and contact particulars of each person attending and any other information required by the notice at least 5 working days in advance of the date for the ADR process.

(h) It is vital that the parties liaise with, and co-operate with, the Court Registry in the time prescribed and provide the Court with the required details. Failure to comply with this requirement may lead to the ADR process being vacated and the case being set down for hearing.

(i) The mediator or facilitator is an independent person who will seek to act impartially, fairly and objectively, and to treat the parties in an even-handed way. The role of the mediator or facilitator is to assist the parties to arrive at agreement to settle the dispute or resolve particular issues which are part of the wider dispute, and not to make a decision for them.

(j) The mediator or facilitator will undertake the ADR process as promptly and efficiently as possible with a view to concluding in one session if possible. The preference of the Court is that an ADR process will not go beyond two or three sessions except in exceptional circumstances.

(k) An ADR process is confidential to the parties who participate in it. There shall be no communication of what took place during the ADR process or of its outcome unless the parties present all agree to it. Sections 53 and 57 of the Evidence Act 2006 relating to the evidential privilege for settlement negotiations and mediation, including the exceptions in s 57(3), apply to any communication or information which is intended to be confidential and was made or given in connection with an attempt to settle or mediate the proceeding.

(l) The mediator or facilitator may conduct the ADR process as they think fit, having regard to the nature and circumstances of the dispute and the wishes of the parties. This includes making contact with the parties prior to the ADR process to require information or put in place other process requirements to assist the efficiency of the ADR process. The ADR process will not be conducted under formal procedures or rules of evidence and will be guided at all times by the mediator or facilitator.

(m) In appropriate cases, the mediator or facilitator may set a timeline to ensure that further steps, such as the provision of further information, are completed in a timely and sequential way.

(n) Where issues in dispute include matters of expert opinion, the parties' relevant experts should, whenever reasonably practicable, attend the ADR process or at least be available by telephone should the need arise to discuss such issues during the ADR process. Having experts confer in an ADR process is encouraged. Where experts have conferred during mediation and a statement of their discussions is produced, this may be directed by the Managing Judge to be included in a joint witness statement as evidence under s 57(3)(d) of the Evidence Act 2006 should the matter proceed to hearing.

(o) The parties will be expected to co-operate in good faith and constructively attempt to settle the dispute or issues. Co-operation includes by providing documents, information, submissions, specific wording amendments sought and any other assistance suggested or requested by the mediator or facilitator.

(p) In ADR processes involving a large number of parties and/or complex issues, the Court may arrange for the ADR process to be undertaken by more than one mediator or facilitator.

7.4. Remote attendance

(a) Remote attendance at an ADR event by some form of audio-visual link may be appropriate. If parties seek to attend remotely, they should contact the Court Registry as soon as they receive the notice of the ADR process with their request and the reason why they require remote attendance. Such remote attendance is at the discretion of the mediator or facilitator.

(b) ADR processes may be accommodated entirely by remote attendance or by a hybrid arrangement where some parties meet face to face and others attend remotely. The hybrid approach requires certain facilities to be in place at the venue where the face-to-face participants are located. The Court Registry normally works with the relevant local authority in particular to ensure that suitable premises for the face-to-face ADR process are appropriately equipped.

(c) Microsoft Teams software is currently used by the Court for online meetings including ADR processes. This software does not require a remote participant to have the software installed on their computer and can work through an internet browser such as Edge, Chrome or Firefox. The software operates by way of an electronic calendar invitation sent by the Court Registry to the remote participant by email. That invitation provides the link to connect to the software in an internet browser. The mediator or facilitator may ask the relevant consent authority as a party to the ADR process (particularly in proceedings about proposed plans or plan changes) to set up the invitations.

(d) The minimum requirements for remote attendance at an ADR process are:

i. a room where confidentiality can be maintained throughout the event;

ii. computer or tablet hardware with an up-to-date operating system;

iii. a microphone and camera in or connected to the hardware which are correctly configured to work together; and

iv. a strong internet connection.

(e) Due to the complex nature of managing an ADR process where there are remote participants, the number of participants should be kept to a minimum.

(f) Any alternative arrangement to the directions in this Practice Note will be at the discretion of the mediator or facilitator. Any party who seeks an alternative must raise this with the Court Registry as soon as possible and in advance of a notice of the ADR process being issued.

7.5. Settlement

(a) The mediator or facilitator does not have the power to impose a settlement on the parties but will endeavour to assist them to reach settlement of the whole or parts of their dispute by agreement, employing a range of standard ADR techniques and reaching an advisory level where appropriate in a particular case.

(b) If a party declines to participate in an ADR process and the other parties to the proceeding agree to a settlement by that process, the non-participating party may face consequences in costs if that party cannot persuade the Court that the appropriate outcome in the proceeding should be materially different to the settlement agreed to by the others.

(c) Settlement normally, but not always, involves the withdrawal or partial withdrawal of an appeal or an agreement that can be referred to the Managing Judge as the basis for a request to make a consent order.

(d) In all cases, an outcome document will be produced by the parties at the ADR process and should, if possible, be signed on the same day at the conclusion of the ADR process by all participants. This document should set out all agreements which have been reached at the ADR process and any actions to be undertaken to give effect to those agreements. This document is confidential to those at the ADR process unless agreed otherwise by all those present.

(e) Where an ADR process relates to a decision by or proceeding before a consent authority or a territorial authority, it is helpful if the representative of that authority can come to the ADR process prepared with an electronic document template for setting out the outcome record. It is usual for the ADR process venue to support electronic and computer / laptop tools used by participants to assist in the ADR process such as projection and printing facilities.

(f) ADR processes can sometimes produce, in addition to a resolution of the proceeding before the Court, outcomes that are beyond the jurisdiction of the

Court. Such additional matters should not be included in a draft consent order but may be recorded in a separate agreement that could be enforceable in another forum.

(g) Refer to section 5.8 of this Practice Note for the provisions relating to consent orders.

7.6. Plan/Plan Change ADR processes

(a) ADR processes relating to appeals on statutory planning documents under the Act are logistically complex. The Court Registry and the mediator or facilitator will work closely with the relevant planning authority to manage the timetabling, information exchange, programming and other logistics of these events. This may include acting on the Court's directions in any particular case. Environment Commissioners have developed guidelines and techniques which can assist the parties. The Court anticipates that, as technology improves, these will continue to be developed collaboratively.

8. Evidence

8.1. General law applies

(a) The provisions of the Evidence Act 2006 apply to proceedings in the Environment Court. Attention is drawn to ss 6–9, 23–26 and 53 and 57 of the Evidence Act in particular.

(b) The provision in s 276(2) of the Act, that the Environment Court is not bound by the rules of law about evidence that apply to judicial proceedings, is an enabling provision for the Court and not an exemption for parties, counsel or witnesses.

8.2. Co-operation in the preparation of evidence

(a) The Court expects every party to co-operate with others in preparing evidence for a hearing.

(b) Parties are encouraged, and the Court may direct parties, to prepare a statement of agreed issues and facts including agreed expert opinions together with an agreed bundle of exhibits and an agreed bundle of relevant provisions of statutory planning documents or other relevant documents.

(c) Bundles of evidence and bundles of exhibits or common documents are normally to be filed in both hard copy form (four copies) and electronic form (preferably as portable document format or .pdf files). Both forms of bundle must be organised, tabbed or bookmarked, paginated and indexed consistently and identically.

(d) The content of a bundle of common documents should be carefully reviewed by counsel to exclude irrelevant or unhelpful material and to avoid unnecessary repetition of material.

(e) The proponent in a proceeding (the applicant for consent or the requiring

authority or the party seeking a plan change) will normally be directed to lead the process of preparing the bundles of evidence, exhibits and common documents and file them with the Court in accordance with its directions.

8.3. Statements of evidence

(a) Every written statement of evidence must include:

i. the intituling for the proceeding or another form of heading which identifies the proceeding in which the evidence is being given;

ii. the full name and occupation of the witness;

iii. for any witness who is being called to give expert evidence, the matters of qualification and adherence to the code of conduct for expert witnesses in section 9 of this Practice Note;

iv. a summary of the principal issues that the witness addresses in the statement; and

v. evidence set out in numbered paragraphs on numbered pages.

(b) As a written statement of evidence will normally be presented by the witness at a hearing in Court, the statement does not need to be signed.

(c) Every written statement of evidence must:

i. be set out and formatted in a way that is easy to read and refer to;

ii. be in the words of the witness and not in the words of a lawyer or other person involved in drafting the statement;

iii. not contain evidence that is inadmissible in the proceeding;

iv. not contain any material in the nature of a submission;

v. be succinct and avoid repetition;

vi. avoid the recital of the contents or a summary of documents that are to be produced in any event; and

vii. be confined to and focused on the matters in issue.

(d) Counsel for or other representative of a party is responsible for ensuring that every statement of evidence of a witness called by them complies with the Evidence Act 2006, this Practice Note and any directions of the Court.

(e) Where no specific direction has been given for the filing and exchange of evidence, statements of evidence are to be filed and served:

i. by any proponent or applicant in the proceeding no less than 10 working days before the hearing is to start; and

ii. by any opponent or respondent in the proceeding no less than 5 working days before the hearing is to start.

(f) Failure to comply with this Practice Note or any directions of the Court as to the filing and exchange of evidence may result in leave of the Court being required to call the witness whose evidence is in default or in the hearing being adjourned and the party in default being ordered to pay costs to other parties and the Court arising from any delay.

(g) The Court will normally read the statements of evidence prior to the hearing in which they will be presented.

(h) The presentation of evidence by each witness in a hearing normally proceeds by the witness:

i. being called and going into the witness box;

ii. making an oath or affirmation to tell the truth, administered by the Registrar or hearing manager;

iii. confirming their name, occupation and authorship of the statement or statements of evidence they are giving in the proceeding;

iv. stating any correction to be made to their statement of evidence or presenting a supplementary statement setting out any correction;

v. confirming that, subject to any correction that they may have made, their statement of evidence is true to the best of their knowledge and belief;

vi. answering any supplementary questions in chief relating to other evidence already presented or matters raised by the Court during the hearing;

vii. answering any questions in cross-examination;

viii. answering any questions in re-examination;

ix. answering any questions from the Court; and

x. answering any questions arising from the Court's questions.

(i) Where matters of primary fact are in issue, the Court may require the evidence-in-chief of any witness to be given orally by question and answer.

8.4. Rebuttal evidence

(a) Rebuttal evidence may only be called in response to evidence that could not reasonably have been anticipated. That may include:

i. addressing a matter which could not reasonably have been foreseen before the witness was called or exchanged their statement of evidence; or

ii. where a party or witness is otherwise taken by surprise.

(b) Rebuttal evidence must be strictly limited to statements addressing the evidence-in-chief sought to be rebutted and must not repeat evidence already presented or introduce any new matter.

(c) The admission of rebuttal evidence is a matter for the Court's discretion, to be

exercised in the interests of fairness to the parties and ensuring that the Court is as fully informed about relevant matters as is reasonably practicable.

8.5. Exhibits

(a) Parties are encouraged to confer and agree where possible on any exhibit, including any document or any map, photograph, diagram or other visual material, to be produced in evidence or put to a witness in cross-examination.

(b) Exhibits should be presented in a practical and manageable form at sufficient size and scale to be able to be clearly understood.

(c) Individual exhibits must be separately identified.

(d) A bundle of exhibits should be presented in a paginated, tabbed and indexed folder.

(e) Maps and plans must state their scale and include a scale measure and a north point.

(f) Photographs must be accompanied by a map showing the locations from which each photograph was taken.

(g) Exhibits for the purpose of making or understanding any assessment of visual effects should be prepared in a manner consistent with the best practice guidelines of the New Zealand Institute of Landscape Architects.

(h) Where an exhibit, including a model, is of a size or kind that is impractical to file in Court or provide a copy to other parties, the party intending to produce it at the hearing must notify other parties at the time the evidence referring to the exhibit is due for exchange as to where it may conveniently be inspected.

8.6. Statutory planning documents

(a) Each local authority which is a party to a proceeding must provide the Court with either:

   i. an assurance to the Court that the relevant statutory planning documents which are available on its website are accurate copies of the documents as approved by its governing body and in force at the time of the hearing; and

   ii. appropriate hyperlinks to those documents on its website; or

   iii. true copies of the approved documents which are in force at the time of the hearing in accordance with s 276A of the Act.

(b) In any hearing where it is not practicable to access the relevant statutory planning documents (including any relevant maps, plans or other large files) electronically, each local authority which is a party to the proceeding should bring to the hearing sufficient copies of the relevant documents for the use of members of the Court. Four copies will usually be required.

(c) The Court may retain a copy of such a document for reference during its

deliberations and the preparation of its decision.

8.7. Witness summonses

(a) To avoid the late summonsing of witnesses and to allow a reasonable opportunity for statements of evidence to be prepared, the Court expects any request for a witness summons to be made to it in ample time to enable the summons to be served no later than 15 working days before the start of the hearing at which the witness is to give evidence.

(b) The Court will not normally issue a witness summons less than 10 working days before the start of a hearing unless the purpose of the summons is only for the formal production of a document which is already known and available to all parties.

(c) The Registrar or a Deputy Registrar may issue a witness summons in Form 40 of the Regulations unless the request is made less than 10 working days before the start of a hearing.

(d) Any person served with a witness summons is expected to prepare a written statement of evidence complying with section 8.3(a)–(d) of this Practice Note.

9. Code of conduct for expert witnesses

9.1. Requirement to comply

(a) The matters in this section of the Practice Note apply in addition to and not in place of the matters in section 8 relating to evidence generally.

(b) A party who engages an expert witness must either:

i. give the expert witness a copy of this Code of Conduct; or

ii. be satisfied that the expert witness has seen the Code of Conduct and is familiar with it.

(c) An expert witness must comply with the Code of Conduct in preparing any written statement of evidence or in giving any oral evidence to the Court.

(d) The evidence of any expert witness who has not read or does not agree to comply with this Code of Conduct may be given only with leave of the Court.

(e) The relevant provisions of the Evidence Act 2006 apply, particularly including the definitions in s 4 of "expert" and "expert evidence" and the provisions in relation to statements of opinion and expert evidence in ss 23 – 26, as well as the provisions of this Practice Note. In the event of any conflict, the provisions of the Evidence Act prevail.

9.2. Duty to the Court

(a) An expert witness has an overriding duty to impartially assist the Court on matters within the expert's area of expertise. This duty to the Court overrides any duty to a party to the proceeding or other person engaging the expert.

(b) An expert witness is not and must not behave as an advocate for the party who engages them.

(c) An expert witness must declare to the Court any relationship with the party calling them or any interest they may have in the outcome of the proceeding including under any conditional fee agreement which depends on the outcome of the proceeding.

(d) Every expert witness must treat the evidence of other expert witnesses with the respect due to the opinions of a peer, even if there is fundamental disagreement between the views expressed by the expert witnesses. Any criticism should be moderate in tone and directed to the evidence and not to the person.

9.3. Evidence of an expert witness

(a) In giving any evidence, an expert witness must:

i. acknowledge that they have read this Code of Conduct and agree to comply with it;

ii. state their qualifications, relevant experience and any other basis for their expertise;

iii. describe the ambit of their evidence, listing the issues addressed by them and stating either that the evidence is within their area of expertise or that they are relying on the evidence of another witness;

iv. identify the data, information, facts and assumptions considered in forming their opinions;

v. state the reasons for the opinions they express, including why other alternative interpretations of data are not supported;

vi. state that they have not omitted to consider any material fact known to them that might alter or detract from any opinion expressed;

vii. specify any literature or other material used or relied on by them in support of any opinion expressed;

viii. describe any examination, test or other investigation on which they have relied and identify who carried those out with details of that person's qualifications, experience and expertise;

ix. identify the nature and extent of uncertainties in any scientific information and analyses relied on and the potential implications of any uncertainty;

x. if relying on a mathematical model, include appropriate or generally accepted

sensitivity and uncertainty analyses for that model; and

xi. apply any technical terminology as used in this clause (including uncertainty, sensitivity, confidence and likelihood) or as used in their evidence according to its generally accepted meaning among experts in the witness's field of expertise.

(b) If an expert witness considers that their evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in their evidence.

(c) An expert witness must identify any knowledge gap that they are aware of and its potential implications in their evidence.

(d) If an expert witness considers that their opinion is not firm or concluded because of insufficient research or data or for any other reason, that must be stated in their evidence.

(e) An expert witness must provide an assessment of the level of confidence, and the likelihood of any outcomes specified, in their conclusion.

(f) If after the exchange of evidence has occurred, an expert witness changes any of their opinions or conclusions on a material matter, that must be communicated without delay to all parties to the proceeding in a supplementary statement including the reason or reasons why the opinion or conclusion has changed and such of the information in section 9.3(a)-(e) above as is relevant.

(g) The evidence of an expert witness will normally include any joint witness statement produced at a conference at which they were a participant.

9.4. Duty to confer

(a) To enhance the efficiency of the hearing process the Managing Judge may direct expert witnesses in a proceeding to confer through an expert conference. Any such conference may be held in person or remotely or by some combination of methods.

(b) Except as expressly authorised by the Managing Judge, only experts (being persons who have specialised knowledge or skill based on training, study, or experience) may attend an expert conference. Parties and counsel will normally not be authorised to attend. Lay observers may be authorised to attend where that is in the interests of justice being seen to be done.

(c) An expert conference is confidential to the experts who participate in it. There shall be no communication of what took place during the expert conference or of its outcome other than the joint witness statement produced by the experts.

(d) The Court's preference is for the Managing Judge to appoint an Environment Commissioner to act as facilitator for an expert conference. No fee is payable for this service. In some circumstances, parties may wish to proceed with expert

conferences with alternative or no facilitation. The Court is to be advised accordingly and these Practice Note provisions apply.

(e) An expert conference may occur at any stage of a proceeding, including at the direction of the Court during a hearing, but the expectation is that conferencing will occur prior to a hearing.

(f) Where an expert conference occurs before the exchange of evidence-in-chief in a particular case the Managing Judge may direct that it proceeds based on "will say" briefs being exchanged beforehand. Except as otherwise directed by the Court, that is expected to be by way of an expert witness:

i. confirming any evidence given at an earlier hearing in relation to the same matter; or

ii. as a minimum:

1. setting out the key facts and assumptions relied upon;

2. identifying the methodology and standards used in arriving at their opinion; and

3. clearly explaining the opinion arrived at.

(g) An expert witness must comply with any direction of the Court to:

i. confer with another expert witness;

ii. try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses, to narrow any points of difference between them and to identify any remaining points of difference; and

iii. prepare and sign a joint witness statement addressing the matters listed in section 9.5 below.

(h) In conferring with another expert witness and in preparing a joint witness statement, an expert witness must exercise independent and professional judgment and must not act on the instruction or direction of any person to present an opinion or to withhold or avoid agreement.

(i) An expert conference is an evidential process and not an ADR process. While the experts participating in the expert conference may agree on matters within their fields of expertise, their agreement will not bind any party to a particular overall outcome or to the wording of any condition.

9.5. Joint witness statements

(a) A joint witness statement must include confirmation that, in producing the statement, the experts have read and complied with the Code of Conduct for Expert Witnesses.

(b) A joint witness statement must also include the following matters so far as the experts and the facilitator consider they may be relevant to the expert conference:

i. identification of all material regarded by the experts as primary data;

ii. the key facts and assumptions that are agreed upon by the experts;

iii. identification of any methodology or standards used by the experts in arriving at their opinions and any reasons for differences in methodology and standards;

iv. identification of published standards or papers relied upon in coming to their opinions;

v. the issues that are agreed between the experts and the reasons for those agreements, including an assessment of their level of confidence in the likelihood of any outcome or conclusion in those agreements;

vi. the issues on which the experts cannot agree and the reasons for those disagreements;

vii. identification of any issue which the experts agree is not adequately addressed by the evidence lodged to that point in the proceeding and the reasons for that inadequacy; and

viii. any reservation by any expert about a matter of substantive law or procedure on which they are uncertain (for example, the application of any permitted baseline).

(c) The joint witness statement produced from an expert conference should be completed, signed and dated on the day of that conference or as soon as possible after that.

(d) The Court may limit cross-examination of experts on the matters agreed to at the expert conference as recorded in a joint witness statement and may restrict the calling of any further evidence, particularly where a witness attempts to introduce an issue or issues which the participants in the conference agreed did not need to be considered.

9.6. Party responsibility for expert conference

(a) Parties (through their counsel where counsel have been engaged) have obligations to assist in preparation for expert conferencing, including to:

i. provide experts with all relevant application and appeal documentation updated as appropriate, and pre-circulated evidence (if available) and reports necessary to enable them to thoroughly understand the issues in the proceeding, together with an agreed statement of facts. All documentation referred to above is to be with the experts and the facilitator at least 10 working days prior to the conference;

ii. liaise, including with conferencing experts, to prepare an agreed conference agenda addressing the key issues and pre-circulate it in electronic form to all conference participants, including the facilitator, at least 48 hours prior to

the conference;

iii. liaise on the provision of a suitable recorder to attend the conference and prepare the joint witness statement under the direction of the experts and facilitator;

iv. liaise with the Registry on a suitable, appropriately equipped venue or logistics for remote attendance; and

v. in the event the expert conference is not facilitated by an Environment Commissioner, counsel are to agree and arrange for one of them to be responsible for circulation of the joint witness statement to the parties, the facilitator and the Court.

(b) If an Environment Commissioner is appointed to facilitate the conferencing:

i. parties and experts shall abide any additional instructions the Commissioner may provide to assist managing and the efficiency of the expert conference; and

ii. it will be at the Commissioner's discretion as to whether the conference is held face to face, by remote attendance or a hybrid of these methods. Where remote attendance is directed, the relevant provisions of section 7.4 of this Practice Note apply.

10. Procedure at hearings

10.1. Order of parties

(a) The Court normally conducts an appeal as a fresh hearing. The extent to which issues will need to be heard by the Court may be subject to the extent to which facts are admitted or matters are agreed between parties or in any joint witness statement.

(b) On a directly-referred application, the hearing will be the first occasion on which the proposal has been heard and able to be challenged by opposing parties.

(c) The Court will normally hear first the party who applied for consent or is promoting a policy statement, plan or plan change, followed by any party who supports the grant of consent or the policy statement, plan or plan change. The Court will then hear the consent authority, followed by any party who opposes the grant of the consent or the policy statement, plan or plan change. The party who went first then has a right of reply.

(d) In a proceeding where there is a burden of proof on a particular party, for instance in an application for an enforcement order, the Court will usually hear that party first.

(e) The order of parties in complex cases can vary depending on the number and range of parties and issues and is a matter for directions by the Managing Judge

following discussion with the parties at a conference.

(f) In a complex case, the Managing Judge may make directions which include, without limitation:

i. the presentation of full opening submissions from all parties, in some appropriate order, at the commencement of the hearing and before evidence is heard;

ii. a full opening by the proponent followed by summary openings from other parties at the commencement;

iii. synopses of submissions on identified key issues from all parties filed and served prior to the hearing, to be read in advance by the Court;

iv. a statement of agreed facts and issues filed prior to the hearing with submissions presented at the hearing; and

v. any other approach which responds to the circumstances of the case in a way which is fair and efficient.

10.2. Opening and closing submissions

(a) A party's opening submissions to the Court should:

i. list the outstanding issues to be resolved by the Court;

ii. set out the party's position on the issues;

iii. outline the circumstances and the nature of the evidence to be called including a list of the witnesses to be called on behalf of the party and the issues they will be addressing, without rehearsing that evidence;

iv. state the resource management factors relevant to their case;

v. state the legal authorities and principles on which they rely;

vi. be succinct and avoid repetition;

vii. avoid the recital of the contents or a summary of documents that are to be produced in any event; and

viii. be confined to and focused on the matters in issue.

(b) After all the evidence has been heard, a party who presented their case first may have an opportunity to address the Court in reply to any party who presented their case after the first party closed theirs. That opportunity will be strictly confined to replying to the later cases and is not an opportunity simply to repeat the first party's case.

(c) The Court does not normally allow a party who has heard all the evidence of an opposing party prior to opening their case to make further or closing submissions in reply.

(d) Parties who appear solely in support of a principal party are not normally allowed

a separate opportunity to reply.

(e) In complex cases and where the Court would be assisted by receiving submissions which provide an overview of each party's position on the disputed issues in the proceeding, the Court may invite closing submissions from all parties.

10.3. Citation of Court decisions

(a) Counsel are requested to adopt a considered and discerning approach to the citation of cases, with particular emphasis on:

i. citation of only the most recent or authoritative statement on a point, rather than a number of cases saying more or less the same thing;

ii. identification of relevant passages by paragraph or page number;

iii. identification of reported citations where those exist; and

iv. being succinct and avoiding needless repetition.

(b) Care must be taken by counsel to avoid citing any decision that has been overturned on appeal (whether reported or not), except where the decision is authority for a point that was not overturned.

(c) Casebooks of authorities should be confined to copies of cases that are to be specifically drawn to the Court's attention and relied upon.

(d) Electronic copies of authorities are acceptable. Copies should be filed in portable document format (.pdf).

10.4. Presentation of draft conditions

(a) In any appeal relating to a resource consent or notice of requirement, the applicant or requiring authority is responsible in the first instance for providing a set of draft conditions.

(b) Any party proposing any amended conditions is likewise responsible for providing those.

(c) The format for such draft conditions should be in both hard copy (with and without tracked changes) and in the .doc format for Microsoft Word.

(d) A resource consent includes all conditions to which the consent is subject and so a consent and its conditions should generally be set out together in one document.

(e) Counsel are expected to ensure that draft conditions presented to the Court meet the following standards of good practice:

i. Conditions should promote sustainable management.

ii. Conditions should not nullify the grant of the consent.

iii. Conditions should not unreasonably limit a person's rights and freedoms.

iv. A resource consent, which includes its conditions, must stand on its own

and be capable of being interpreted and applied in its own terms.

v. Conditions should make sense and be coherent, consistent and complete. There should be clarity, certainty and enforceability of all the conditions.

vi. Conditions are to accurately reflect not only the proposal applied for but also any modification suggested or offered in evidence during the course of a hearing.

vii. Conditions should be drafted to apply specifically to the elements or aspects of an activity which require resource consent and should not simply list all documents presented with an application for resource consent.

viii. Performance standards must be set out in the conditions of consent and not be left to be determined later.

ix. Conditions must not purport to delegate arbitral or judicial functions to officers of or consultants to a consent authority.

x. Conditions which require expert certification or oversight of an activity must include clear parameters and specified standards.

xi. Any condition that is volunteered by an applicant and which could not normally be imposed (for example, an *Augier* condition) must be specifically identified with the particular basis for including it.

10.5. Site visits

(a) The purpose of a site visit is to assist in understanding the evidence in the proceeding and not for the Court to collect evidence itself.

(b) The Court will normally undertake a visit to the site or sites where a proposal is planned or where the effects related to the issues in the proceeding can be observed. The Court will normally confer with the parties about the itinerary, timing, health and safety precautions and other aspects of the visit at a conference or during the hearing.

(c) The Court will normally undertake a site visit without any party, counsel or witness accompanying it. If necessary or desirable, the Court will confer with parties to identify a suitable person who is not otherwise involved in the hearing to act as a guide for the visit.

(d) Where a site visit is arranged or facilitated by a person conducting a business or undertaking (**PCBU**), the PCBU and the Ministry of Justice will have:

i. overlapping duties under the Health and Safety at Work Act 2015 for the purpose of the site visit; and

ii. shared responsibility for ensuring that, before the site visit, a Health and Safety Plan is put in place that complies with the Health and Safety at Work Act 2015 and any other applicable legislation or legislative instrument and addresses any concerns or requirements of the Ministry of Justice and the

PCBU in relation to the site visit.

(e) Where directed by the Court or the Ministry of Justice, a PCBU who arranges or facilitates a site visit shall file with the Court and serve on all parties (including any third party who may be involved with the site visit) an Indicative Site Visit Health and Safety Plan in accordance with the requirements that may be set out from time to time on the Court's website.

(f) The Court will normally report to the parties after any site visit to inform them of what occurred. If the Court gains any material information which differs from the evidence or which indicates that a material matter has not been properly presented in evidence, the Court will inform the parties and provide an opportunity to explain or comment on this.

10.6. Release of decisions

(a) Any decision in a proceeding will be issued to all parties at the same time. A decision may be issued by being announced in open court or sent to a party's address for service by post or by e-mail or both.

(b) Decisions are normally not released to the news media until three working days after being issued to the parties.

(c) The periods within which the Court aspires to issue its decisions after a hearing are described in a protocol published on the Court's website under s 288A of the Act:

https://environmentcourt.govt.nz/assets/Documents/Publications/Protocol-as-to-Environment-Court-Judgment-delivery-expectations.pdf

10.7. Costs

(a) There is no rule or practice that costs follow the event in proceedings before the Court and there is no schedule of costs applicable to proceedings before the Court.

(b) The provisions of this Practice Note are a guide to the normal exercise of the Court's discretion in relation to costs under s 285 of the Act and are subject to any relevant consideration in the circumstances of any particular case, including whether the proceeding raises relevant matters of public interest or importance.

(c) Costs incurred in relation to the hearing before a consent authority or in Court-assisted ADR processes cannot be claimed.

(d) The Court will not normally award costs against a public body whose decision is the subject of the appeal unless it has failed to perform its duties properly or has acted unreasonably.

(e) If the decision appealed against would have imposed an unusual restriction on the appellant's rights and the restriction is not upheld, costs may be awarded against the respondent which sought or imposed that restriction.

(f) Where an appeal against a decision on a submission on a statutory planning

document under Schedule 1 to the Act has proceeded to a hearing, costs will normally not be awarded to any party in recognition of the participatory nature of making such statutory planning documents.

(g) There is a presumption that an applicant will be required to meet the expenses incurred by the Court in hearing a matter that is directly referred to the Court.

(h) If a party fails in a significant way to comply with procedural directions or otherwise behaves in a way that requires additional expenditure by the Court itself, including for travel and accommodation, the party may be required to meet those costs of the Court in addition to any costs awarded to other parties.

(i) Where an appeal or application is withdrawn after being set down for hearing, the Court will normally award costs against the appellant or applicant in favour of the other parties in respect of their preparation for hearing.

(j) In considering whether to award costs and the quantum of any award, the following factors are normally considered and given weight if they are present in the particular case:

i. whether the arguments advanced by a party were without substance;

ii. whether a party has not met procedural requirements or directions;

iii. whether a party has conducted its case in a way that unnecessarily lengthened the case management process or the hearing;

iv. whether a party has failed to explore reasonably available options for settlement;

v. whether a party has taken a technical or unmeritorious point and failed;

vi. whether any party has been required to prove facts which, in the Court's opinion having heard the evidence, should have been admitted by other parties.

(k) A party may avoid liability for the costs of other parties having to prove facts by lodging and serving a statement specifying which of the findings of fact contained or referred to in the decision under appeal are admitted by that party and which of them the party requires to be proved at the appeal hearing.

(l) Parties should not treat the Court's discretionary jurisdiction to award costs as a substantive element of their case in a proceeding. If all or part of the case of any party is irrelevant, inaccurate or otherwise lacking in merit, the issue should be raised as early as possible in an ADR process or at a conference or by an application to strike out that party's case.

(m) A direction as to costs is normally given at the conclusion of a substantive decision by the Court.

(n) If no direction in relation to costs is made in the substantive decision, and whether or not costs are expressly reserved, the default position which applies is that:

i. any party claiming costs must, within 10 working days of the date of issue of the decision, lodge with the Court and serve on all other parties an application supported by particulars; and

ii. any party from whom costs are sought must, within a further 10 working days, lodge a response to the application and serve it on all other parties; and

iii. the applicant for costs may, within a further 5 working days, reply to any relevant matter raised for the first time in the response and serve it on all other parties; and

iv. the particulars of the claim should include invoices or other proof of costs incurred.

For the Court:

D A Kirkpatrick

Chief Environment Court Judge

Kaiwhakawā Matua

1 December 2022