management of contamination land is more amenable to measurement, although by largely qualitative indicators. It is suggested that the SEPP will assist in improving the interface between and application of current systems rather than by creating an entirely new system.

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Security for Costs

In *Wakatipu Environmental Society Incorporated v Carlin Enterprises Limited* (C1/97) the Environment Court considered an application for security for costs against a submitter appealing a Council's grant of consent. (Such applications are now possible since the *Resource Management Amendment Act* 1996 gave the Environment Court the same powers as the district court).

In the case of an application for security for costs against an incorporated society, the Court found that the applicant must first establish that the threshold test for such applications has been crossed, namely that the assets of the society would be insufficient to pay any costs awarded against it.

In this case the Society only had assets of some $5000 and, on that basis, the Court concluded that the threshold test was met.

The Court then went on to consider whether, in the exercise of its general discretion, it should grant security for costs.

In considering that question, the Court set out the factors to be taken into account as established from leading cases. These included whether granting the order may prevent a bona fide case from proceeding and whether the applicant may be using the application oppressively to prevent the appellant's case coming before the Court.

Referring to a decision of the Court of Appeal, (see *Ratepayers and Residents Action Association Inc v Auckland City Council* 1986 1 NZLR at 750) the Court went on to note that in proceedings such as these (ie appeals under the *RMA* the public interest is a factor which also needs to be considered in the exercise of the discretion.

The fact that costs will not always follow the event in Environment Court appeals was also seen as another relevant consideration.

The Court decided that the Society had pursued its opposition in a reasonable and responsible manner, raising legitimate concerns. It was exercising its statutory right of appeal for what were, at least prima facie, valid and sound grounds and it was not using its inability to pay costs as a means of putting unfair pressure on Carlin.

In reaching its decision the Court placed weight on the fact that the application for security for costs appeared to have been bought by the applicant solely to put pressure on the Society to withdraw its appeal. The Society had previously turned down the applicant's offer of $50,0000 to advance its "conservation interests" in the district in return for its withdrawal of the appeal.

It is clear from this decision that simply because an appellant may not be able to pay costs if awarded against it is not of itself a reason for the Court to require security for costs. An applicant for such an order will need to convince the Court that, given the various factors set out above, it is appropriate for the Court to grant the application.

Building Code v District Plans

The High Court has clarified that rules in district plans in respect of building requirements are in addition to the requirements of the *Building Code*. That is the case, notwithstanding that s7(2) of the *Building Act* 1991 provides that no one shall be required to achieve performance criteria in relation to a building work which are additional to or more restrictive than those specified in the *Building Code*.

In *Building Industry Authority v Christchurch International Airport Limited and Christchurch City Council (Christchurch* HC AP No 78/96) the district plan required specific noise measures to be built into houses in the vicinity of Christchurch Airport whereas the *Building Code* did not specify any particular noise controls for houses adjacent to airports.

The Court held that only by focusing on the purposes of each statute can their potential conflicting provisions be sensibly and effectively harmonised. The *Building Act* enables Councils to control building works in the interests of ensuring the safety and integrity of structures. The *Resource Management Act* enables councils to impose controls on the activity to be carried out within the structure. It is therefore possible for district plans to require more stringent controls than those contained in the *Building Act*. If the opposite held true, controls otherwise desirable and necessary to achieve the purpose of the *RMA*, could not be imposed until the building code was amended.

Protection of Productive Soils

The Environment Court has held that under the *RMA* high quality rural land is no longer to be given the preferential status that it had under the *Town and Country Planning Act* 1977.

In *Canterbury Regional Council* v *Selwyn District Council and Tucker* (W142/96), the regional council appealed the city council's decision to accept a plan change to rezone rural land on the edge of Lincoln township in Canterbury for residential purposes. The court considered evidence as to the productive capacity of the soils on the site and whether such soils warranted protection for the benefit of future generations. In considering Part II of the *RMA*, the Court found that the removal of the land from productivity could not possibly have any foreseeable effect on the ability of future generations to feed themselves.

Although a regional council could devise policies to

protect versatile lands, whether it could support such policies in the face of other resource demands (in terms of Part II of the Act) was a different matter. A regional council cannot use the Act as a vehicle for elevating any particular resource within its region to a status of national importance unless supported by s. 6.

The Court concluded:

* Land/soil is a resource which must be considered in terms of s. 5 and s. 7 of the RMA in relation to both present and future generations and the activities permitted upon that resource are to be determined by the facts pertaining to the district or region.
* Part II matters in a regional context are broad-based and a regional council should not concern itself with matters of minor significance such as 5 hectares of land.

The Court confirmed the District Council's decision on the grounds that urban land resources were likely to be exhausted within a short period of time and the protection of land of high quality would represent a constraint on the development of the township.

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