

Environmental Legal Assistance Fund (ELA Fund)

INFORMATION GUIDE FOR APPLICANTS

This guide is designed to help you determine whether your group is eligible for funding and to help you answer the questions in the ELA Fund Application Form.

The ELA Fund

The Fund provides not-for-profit groups with financial assistance to advocate for an environmental issue of public interest in resource management cases at the Environment Court, higher Courts, and at Boards of Enquiry constituted under the "Call in" provisions of section 141B.1 (a) of the Resource Management Act 1991. The not-for profit groups may include environmental, community, iwi and hapu groups. It is not essential that groups be incorporated. The fund is not available to individuals.

Applications for cases to the High Court and the Court of Appeal may be funded. These require a new application to the Fund to be lodged. Groups who have already received funding for the Environment Court case, and who are seeking to defend the decision of that Court have the greatest likelihood of receiving funding.

For Board of Enquiry hearings under the Call in process the Fund will not accept applications related to the costs of preparing submissions to the Minister. This is a prior stage to the Board of Enquiry hearing

The Fund reimburses the costs of legal counsel and expert witnesses including for preparation, mediation, and presentation of the group's case at the Court or Board of Enquiry hearing.

An independent Advisory Panel will assess your application against the criteria set out in the Guide to Applicants and will make its recommendation to the Chief Executive's Office of the Ministry.

Where a group is successful in its application it is required to enter into a legal Deed with the Ministry. Please refer to the website for a copy of a draft Deed.

How Much Is Available?

A maximum amount of \$40,000 plus GST per group per application is available.

Who We Fund

The ELA Fund is available to any non-profit group. This includes:

- incorporated societies
- non-profit trusts
- iwi and hapu groups or other Maori groups
- non-incorporated groups.

Please note that the Fund is not available to individuals. The group that applies for funding must itself be a party to proceedings before the Court. Note that where individuals are registered as parties to proceedings, even where they purport to act "on behalf of" or "for" or as a group etc., they will not be considered for funding.

Legal Status

If you are a legal entity

Many legal bodies are registered with the Ministry of Economic Development as either a trust or an incorporated society and will have an identifying registration number. Please attach a copy of your Certificate of Incorporation and your group's mandate/rules.

Not a legal entity

If you are not a legal entity you must:

- provide recognition from the court that your group is a party before the court in the proceedings, and
- document the membership of the group and provide proof of the members and history of the group, and
- have more than one individual who has authority to sign documents, including the ELA Fund Application Form, on behalf of the group, and
- include a mandate from the group granting those members authority to sign, and
- provide information that the group has structures in place to act as a group, ie, evidence of regular meetings, bank account information.

As a non-incorporated group, you should be aware that recognised legal status usually protects individual committee members from having to personally pay any award of costs against the group.

Iwi/hapu groups/other Maori groups

If you are an iwi, hapu or Maori group and you are not an incorporated group or a trust, please include the same information as required for a group which is not a legal entity.

What We Fund

The ELA Fund supports groups that are a party in resource management cases before the Environment Court and Boards of Enquiry constituted under the "Call in" provisions of section 141B.1 (a) of the Resource Management Act 1991. The ELA Fund supports groups which are involved in cases, where:

- the focus of the case is the protection or enhancement of environmental qualities, and
- the case affects the wider community or general public, and
- the group has shown why financial assistance is required.

Applications will only be considered if the case is to be heard by a court and is about a resource management matter. Applications for assistance at council hearings will **not** be considered.

Cases before the High Court or Court of Appeal **may** be considered if:

- the relevant earlier court case was funded by the ELA Fund, or
- the group is defending a successful outcome from the Environment Court

Note: Applicant groups which are predominantly made up of people who have a pecuniary interest in the case and would benefit materially from a decision in their favour, will only have funding provided if their case raises matters of wide public interest, usually of precedent-setting value.

What the Fund Covers

Funding is available to cover the time and expenses of legal representatives and/or expert witnesses used in preparing for, resolving and/or presenting cases before the court. As part of your application you must include a short resume about your legal representatives and expert witnesses which outlines their relevant qualifications and experience. You will also need to provide evidence from your legal counsel as to whether they have a current practising certificate.

Funding is *not* available for:

- the costs of members of applicant groups in any event
- the sundry costs of non-incorporated groups
- the costs of establishing the group as a legal entity
- the ongoing costs of the group, such as capital costs and rent
- costs awarded by the court against a group or individuals of the group
- work on the case that has already been completed prior to the application being lodged.

There is no guarantee that any or all requested funding will be awarded. The applicant must be eligible for funding, and only reasonable costs will be considered for funding.

Please note that where insufficient information is provided a request will be made for additional information. The Advisory Panel will not be asked to assess your application until all the required information has been provided.

Funding maximum and multiple plan process applications

The Ministry will fund to a maximum of \$40,000 plus GST per group per application in respect of any one case. However, where the applicant is involved in a number of cases arising out of the same plan process, the Ministry, if it is to provide funding, will do so only after considering all the cases that the applicant is involved in. In this context, the “*Plan process*” means appeals relating to *regional policy statements, regional and district plan reviews, plan changes or variations*.

Accordingly, applicants for ELA funding involving more than one case arising out of the same plan process must make one application only to cover all cases. This application must cover all the issues and cases that are the subject of the plan process involving the applicant and should detail:

- how and to what extent any of these cases are interrelated
- the plan process that the cases relate to
- the counsel to be engaged
- what evidence by whom is proposed
- all information relating to any interlocutory proceedings and other procedural matters that may have taken place
- where known, any related parties involved in supporting the issues for which the group wants funding (e.g., the Council, other groups) and what issues they are contesting.

Applicants will be expected to prioritise the cases and/or related issues, and if funding is made available, it will be fixed in a sum that enables the applicant to participate in those cases with the highest priority. That funding will not be limited to \$40,000 plus GST. On the other hand neither will it be based on a possible maximum of \$40,000 plus GST for each issue or case, arising out of the same plan process.

Making an Application

Applications must be made on the official application form. This is available on the Ministry for the Environment’s website, www.mfe.govt.nz (go to “Working with you”, then to “Sources of funding for projects and participation”), or by contacting the Ministry.

As it takes time for applications to be processed, you are advised to apply for funding early, preferably as soon as you have lodged your appeal or otherwise become a party to proceedings. It is important that you include all requested information or processing your application will be delayed.

Communication with the ELA Fund Team before you send in your application is strongly advised, particularly to ensure your application is complete. Applications are not forwarded for consideration by the Advisory Panel unless all required information has been made available.

Prospective applicants are encouraged to discuss their case with the ELA Fund Team at an early date, especially when time is short, in order that groups are not unnecessarily

disadvantaged. Particularly, please note that costs incurred before applications are received by the Ministry, cannot be met by the Fund.

Processing applications normally takes six to eight weeks.

The Application:

The application is divided into seven sections; Information that we require

1. Contact Details

- Primary & Secondary contacts for the group.

2. Group Details

- Type of group (Incorporated, Trust or Non-Incorporated)
- Financial details (Bank accounts for the previous 3 months etc)
- Is the group part of a larger national body

3. Application Details

- Type of case
- History of the group's involvement in the case
- Outline of the legal case and the group's argument
- Public interest in the case
- List of other parties involved in the case

4. Mediation

- Has the group been involved in mediation for the case?
- Have any issues been settled by mediation?

5. Supporting Information

- List of all supporting documents provided with application

6. Funding Details (for each legal representative & expert witness)

- A brief summary of their experience and expertise
- Whether or not the legal representative has a current practising certificate
- Original copy of their quote

7. Group's Declaration

- Correctly signed application

When submitting an application to the ELA Fund, group information into appropriate sections.

Who Makes the Decision?

An independent Advisory Panel assesses the applications and makes recommendations to the Office of the Chief Executive of the Ministry for the Environment.

Successful Applicants

If successful, applicants will be expected to enter into a Deed of Funding with the Ministry setting out the terms and conditions of funding. Your group will be required to report back and provide:

- an update on the success of the case
- feedback regarding the value of funding received
- a summary of money spent
- a copy of the decision
- an update on case progress by 1 June of each year until a decision on the case is reached.

The Ministry will pay only on invoices from the group's legal representatives and expert witnesses identified in the Deed of Funding. The invoices must be made out to the Ministry for the Environment. Generally, the Deed of Funding begins from the date the application was first received by the Ministry. Costs incurred by the group before this date will not be eligible for funding.

Complaints from third parties

Where issues merit it, complaints or requests for review of decisions from third parties are submitted to the Advisory Panel for consideration. As with applications, the Secretary for the Environment makes the final decision.

Please send applications to:

Environmental Legal Assistance Fund
Ministry for the Environment
Level 5, NZI House
96 Hereford Street
PO Box 1345
Christchurch

For more information please contact:

The ELA Fund Team
Ministry for the Environment
PO Box 1345
Christchurch
Telephone (03) 365 9267 or (03) 365 9556
Fax (03) 365 9560
Email elafund@mfe.govt.nz