

Appearing at a Council Plan Change Hearing

**An Everyday Guide to the
Resource Management Act Series**

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Introduction

The Resource Management Act 1991 (RMA) sets out a way for councils to make decisions about activities that might affect the environment. Sometimes a council holds a public hearing to help it make a decision. There are two sorts of hearing. First, there are hearings relating to a local authority's district or regional plans. Second, there may be hearings on individual development proposals. These either relate to applications for **resource consent** or **notices of requirement**. Hearings give people the chance to have their say about what a council or an applicant for resource consent is proposing.

This guide is for **submitters on a council plan change** – people who are going to appear at a council hearing. It explains:

- how to get involved in a council hearing
- what you'll do at a hearing, and who you'll see
- how to prepare, and do well on the day
- the rights and rules that affect you
- your responsibilities.

A council hearing can look a bit like a court, with lawyers, witnesses and a hearing panel listening and asking questions. But it's not supposed to be too formal, or off-putting. Council hearings are designed for you to have your say and let other people have theirs. They're a key way for the community to be involved in council decisions about the environment.

First things first: plans and consents

City, district and regional councils create **district plans** and **regional plans** to set out how they will manage the environment. These plans contain rules that control what people can do in the environment.

Regional plans tend to concentrate on particular parts of the environment, such as the coast, a river or the air. **District plans** contain the policies and rules that a council will use to manage the use of land in its area.

Some activities can be done as of right, but others need permission from the local council. This permission is called a **resource consent**. If you are involved in a resource consent you need to read the guide to *Appearing at a Resource Consent and a Designation Hearing*.

Sometimes a council wants to change or vary a district or regional plan to allow for development, or to protect the environment. It might even want to create a whole new plan or policy statement. Private individuals can also ask for a plan to be changed. All plan changes and variations are required to be **publicly notified**. This enables people to make written submissions on the proposals.

Publicly notifying a plan change or variation means that the council advertises it in the paper, and calls for submissions. Sometimes a council also directly contacts people who might be affected.

Written submissions

A written submission is a statement that explains why you support or oppose a **plan change** or **variation**. It also states whether you want to speak at a hearing if the council holds one.

A **plan change** is a change to a plan that's already in full operation. A **plan variation** is a change to a **proposed plan** – a plan that's yet to be fully confirmed.

After receiving all the written submissions, council officers prepare a summary of submissions and send notice of it to everyone who made a submission. You can then make a further submission either supporting or opposing someone else's submission.

Council officers usually prepare a report (called an officer's report) about the plan change or variation. This report may include recommendations which the council can use in making its decision. The council is not required to follow the recommendations, but can use them as a guide.

Make sure you state in your written submission if you want to speak at a council hearing. If you don't state in your written submission that you want to speak at the hearing, you won't be told that the hearing is on, and you may not be able to speak at the hearing.

What you'll do at the hearing

The hearing gives you the chance to explain your submission to the **hearing panel**, and present evidence that supports your submission.

A **hearing panel** is made up of councillors and/or independent commissioners (one of whom may act as the chairperson). Their role is to listen to arguments for and against a proposal put forward by submitters, and they are usually authorized to make a final decision on it.

You'll have the chance to read out a written statement, and to present evidence that supports your submission. The hearing panel might ask you questions about your submission, your statement, or your evidence. After everyone has had a chance to speak, the hearing panel makes its decision. This is usually done in private, but on occasion will be in public.

Making a statement

The statement you read out at the hearing will expand on the points you've made in your written submission. Someone else can read out your statement for you, if you want.

Your statement might include examples that illustrate some of the points in your submission, or comments about the recommendations in the council officer's report. You can also just read straight from your submission.

Plan your statement carefully, and practice reading it. The hearing is your chance to give voice to your submission.

Evidence is anything that backs up your statement. Evidence can be oral, written or visual – you can use photographs and drawings as evidence. Evidence should focus on facts – not emotions – and be directly relevant to the submission.

Who else will be at the hearing?

The hearing panel may have any number of people on it. A Maori commissioner may also be on the hearing panel if the applicant, the council or the submitters have asked for one.

A council officer will generally be there to present the council officer's report about the proposed plan, plan change or plan variation. Other council officers, such as urban designers or traffic engineers, might be there to give technical advice.

At a hearing about an application for a private plan change, the applicant will be there, and might have an advocate or a lawyer as well. The applicant might have brought other experts to back up his or her proposal.

The other submitters to the plan change will be there as well. They might also have brought an advocate, a lawyer or an expert witness (such as a professional with expertise on a matter which the submitter submitted on).

A council hearing is usually open to the public and the media, so there may be members of the public in attendance at the hearing. Unless they have made a submission and asked to be heard, they will not be invited to speak at the hearing.

Getting ready for the hearing

The council will tell you the date and time of the hearing at least 10 working days beforehand. You can start getting ready well before then, preparing and practising your statement, and gathering your evidence. Nothing beats preparation for getting your point across on the day.

- It is a good idea to prepare a written statement to read out at the hearing. Identify the key points you want to get across, and back them up in your statement.
- Practise reading out your statement. You want to get it right, and to look confident and comfortable. Practising will make sure that you do.
- Think about what questions the hearing panel might ask you, and how you can answer them.
- Go to a council hearing to see how it works and get a feel for the process. You don't want surprises on the day.

At least five working days before the hearing, you'll get a copy of the council officer's report about the proposed plan, plan change, variation, notice of requirement or a private plan change. Make sure you read it before the hearing.

- Think about what's in the report. Is there anything you want to reply to in your statement?

You might also be invited to a pre-hearing meeting with the applicant (in cases where the plan change is not made by the council itself), other submitters and the council officer who reported on the proposed plan, variation, notice of requirement, or plan change. A pre-hearing meeting can be a useful way to try and sort out issues before a hearing. Everyone at the hearing will get a copy of a report about what went on at the pre-hearing meeting if the parties agree. You don't have to attend but a pre-hearing meeting can be useful in resolving issues in a relatively informal setting.

How to do well on the day

You want to make a good, strong presentation. You want the hearing panel to focus on your statement and on your evidence. Keep your statement simple, make your key points clear, speak clearly, and be yourself.

You can expect the hearing panel to treat you with dignity and respect, and to put you at ease. You should treat them with respect also.

Make it clear and easy to hear

- Read your statement clearly and slowly enough to be understood. Try to speak clearly and not repeat yourself.

Stick to the point

Everyone is here for the same reason, and needs their views to be heard. The hearing panel is only interested in the relevant facts and opinions.

- Stick to the facts in your statement.
- Focus on the environmental matters, not simply what you like and dislike.
- Expand on your submission, but don't introduce any new issues.
- Don't repeat yourself or be long-winded.
- Don't play on emotions or breach protocol.

Remember the hearing is neutral

Councillors on a hearing panel aren't there as politicians. They're there as decision makers who have to weigh up both sides of an argument.

- Leave your personal opinions about the council or the applicant outside the door.
- Don't use the hearing as a chance to discuss or argue about other issues. Focus on the issue at hand.

Use an advocate or a lawyer if that will help

- Use an advocate (a spokesperson) if you're nervous about making a submission, or if a group is making a submission and wants one person to speak for you all. The advocate could be a member of your group.
- Use a lawyer as your advocate if your submission explores legal matters, or if you think a professional interpretation of legislation or case law is needed.

Use expert witnesses if that will help

Members of the hearing panel won't necessarily be experts – they'll want to hear good, solid evidence to help them make a decision. You might need expert witnesses to present evidence about technical topics such as soil stability and microbiology. If you are not an expert witness, don't pretend to be one.

In a hearing about a resource consent application, the applicant might use expert witnesses to support his or her case. This means it would make sense for you to use expert witnesses as well.

- Stick with what you know, and use expert witnesses such as planning consultants, surveyors, engineers or scientists when you need to.
- Before you start, make sure any professional witness you use supports your point of view.
- Check the costs before you employ an expert witness and explore whether the cost of experts can be shared with other submitters. You can obtain a list of who the other submitters are from the council.

Speaking with other submitters

If the hearing involves many submitters, you may make your submission along with other submitters speaking about the same topic as you. If your written submission covered lots of different issues you might have to go to the hearing on different days.

Council hearings are open to the public. Go along to one, and watch how it works. It's the best way to prepare.

The order of events at a hearing

Council hearings generally follows the same order. Here's where your submission fits in.

1. The chairperson usually welcomes and introduces everyone.
2. A council officer may present a report about the proposed plan, or the plan change or variation.
3. The applicant usually presents a statement and answers questions from the hearing panel. The applicant might also have others present evidence in support of his or her statement. The hearing panel may also ask questions of anyone presenting evidence.
4. **The submitters (and further submitters when there are any) present their cases and answer questions from the hearing panel. Submitters might also have others present evidence supporting their statement. The hearing panel may ask questions of any one presenting evidence in support of a submitter.**
5. **An applicant for a private plan change has the right of reply to points raised by, or on behalf of, submitters.**
6. The hearing panel might ask more questions of the council officer, the applicant or the submitters.
7. The hearing closes and the hearing panel makes its decision. This can be done in private. The panel has to make a decision about plans, plan changes, and plan variations without unreasonable delay.
8. The council writes to you to tell you what the decision is. If you consider that the council is wrong you may be able to appeal all or part of the decision to the Environment Court.

Get professional advice if you're thinking about appealing the decision. A lawyer, planning consultant or someone with similar professional expertise should be able to tell you if you are likely to be successful. Appeals are often complex and expensive, and need to be well thought out. Getting professional advice early on can save you significant costs later.

With the right to appeal to the Environment Court comes a responsibility to act in a proper manner and not be frivolous or vexatious. This avenue can result in cost and delays for all the parties involved.

Rights and rules: things you need to know

You have certain rights when you appear at a council hearing, and you have to follow some rules as well.

Can I have support people?

Yes. Your friends, family, and support people can come to a public hearing to support you. You can call them as witnesses and they can speak your behalf. But remember it's the quality of the argument that counts – not strength in numbers.

Will the hearing recognise tikanga Maori?

Councils must allow for submissions and evidence in te reo, but you must ask for it in your written submission to the plan change, variation or proposed plan when it is notified, and/or through further submission. Ask in your written submission if you have other specific requests for dealing with Maori protocol or other cultural issues.

Councils will generally be open to accommodating most reasonable requests.

Can I ask questions?

You can only ask questions about procedure, if you don't understand what's going on.

Only members of the hearing panel can ask questions about submissions or evidence.

You are not allowed to ask the council officer, the submitters, the witnesses, or an advocate or lawyer any questions. You can suggest questions for the panel to ask, but the panel doesn't have to ask them. Talk to the chairperson about any questions you want to ask when you are giving evidence.

What if I disagree with what someone else says?

You must not speak to the council officer, the applicant, or a witness, no matter how much you disagree with what he or she says. You can only speak directly to the hearing panel. You must never interrupt someone else who is speaking at the hearing.

Will I be cross-examined?

No. No one can be cross-examined at a council hearing. Submitters and other witnesses might be asked to take an oath, but this doesn't usually happen.

What will it cost me?

You have to pay for your own costs, such as travel to and from the hearing, time off work, and lawyers' and professionals' fees. You don't have to pay for anything else.

A hearing allows people on both sides of an issue to have a say and contribute to the council's decision making process. You are doing your bit if you:

- **stick to the issues that concern you and that are relevant**
- **make your statement clear and easy to hear**
- **use professionals to back up your argument if that would help**
- **show respect for the hearing, the commissions, and submitters and for the hearing's purpose**
- **don't grandstand, or get into a debate.**

Summing it up

