

Appearing at a Resource Consent or Designation 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 or a requiring authority (requiring authorities are usually Ministers of the Crown, councils or approved network utility operators) 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 resource consent application or a notice of requirement** – 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** contains 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**.

Every day, people ask their local council for resource consents to do something such as build a house or garage, subdivide their property, build a multi-storey apartment block, or take water from a stream. The person applying for resource consent is called the applicant.

Councils use the process set out in the RMA to decide whether to publicly **notify** a resource consent application. If an application is notified, anybody can make written submissions supporting or opposing it. In some cases, the council may notify an application only to those people it believes are adversely affected. If so, only those people can make a submission. People who make submissions can also speak at a hearing held by the council.

Publicly notifying a resource consent application means that the council advertises it in the paper, and calls for submissions. Sometimes a council also directly contacts people who might be affected.

District plans can also include **designations** for things such as schools, prisons, roads, gas lines, telecommunications and power supplies. A designation is a bit like a resource consent, but it's used for major public works. A designation means that a section of land is set aside for a particular use in a district plan. Activities in designated areas must still comply with rules in regional plans.

Designated land can be used by a requiring authority for a public work or project. A requiring authority can be a Minister of the Crown, a council, or a network utility operator such as Telecom.

Councils have to notify designations, provide the opportunity for submissions and hold a hearing before putting them into district plans. A 'notice of requirement' is an application for a designation.

Sometimes a council wants to change or vary a district or regional plan to allow for development, or to protect the environment. They might even want to create a whole new plan or policy statement. Private individuals can also ask for a plan to be changed. Under the RMA, councils have to notify plan changes or variations or proposed new plans. This lets people make written submissions in the same way as for a resource consent or notice of requirement.

Written submissions

A written submission is a statement that explains why you support or oppose a **resource consent** application or a **notice of requirement**. It also states whether you want to speak at a hearing if the council holds one.

Council officers usually prepare an officer's report about the application which is sent to all the submitters. This report may include recommendations, which the council can refer to in making its decision. The council is not bound 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 may not 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 consent application, or notice of requirement. Other council officers, such as urban designers or traffic engineers, might be there to give technical advice.

The applicant or requiring authority representatives will also be present at the hearing, and they may have an advocate or a lawyer as well as other expert witnesses to back up their proposal.

The other submitters will be there as well. They might also have brought an advocate, a lawyer or expert witnesses (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 resource consent or notice of requirement. It is important that you read the report 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 other submitters and the council officer who prepared the report. 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 they 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. Speak clearly and try not to 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.

The applicant or requiring authority 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.

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 follow the same order. Here's where your submission fits in.

1. The chairperson usually welcomes and introduces everyone.
2. A council officer usually presents his or her report about the application for resource consent or notice of requirement.
3. The applicant or requiring authority 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 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 anyone presenting evidence in support of a submitter.**
5. An applicant or requiring authority 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 requiring authority, or the submitters.
7. The hearing closes and the hearing panel makes its decision. This can sometimes be done in private. The panel has to make a decision on a resource consent within 15 working days of a hearing. The panel can only make a decision about recommendations on notices of requirement, as the final decision is made by the requiring authority (within 30 working days of receiving the council's recommendation).
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 application when notified. 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 applicant, 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 your 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

