Ministry for the Environment
Manatū Mō Te Taiao

AN EVERYDAY GUIDE TO THE RMA → SERIES 1.4

National Resource Management Act Guidance and Processes

SERIES

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Introduction

The Resource Management Act 1991 (the RMA) is the main law setting out how we should manage our environment. It's based on the idea of managing resources sustainably, and encourages us (as communities and as individuals) to plan for the future environment.

While the RMA is largely put into practice by local government (regional councils, unitary authorities, and city and district councils), it also allows for national guidance and processes. This guide will help you understand these national instruments, particularly:

- what national environmental standards and national policy statements are, the effect they have, how they are developed and how you can get involved
- what water conservation orders are, the effect they have, how they are developed and how you can get involved
- the different ways that the Minister for the Environment can intervene in decision-making processes
- how you can be involved in national RMA processes.

This guide does not cover all of the national instruments available in the RMA, such as Ministerial direction and the use of section 360 regulations. You can find out more about these two instruments in the Ministry for the Environment publication: Your Guide to the Resource Management Act.

National planning instruments

National environmental standards

National environmental standards (NES) are regulations made under section 43 of the RMA. They provide greater certainty by setting out minimum requirements for particular activities, and can protect public health and the environment.

NES prescribe technical standards, methods or requirements for land use and subdivision, water take and use, use of the coastal marine area, discharges and noise matters. They can also include monitoring requirements, particularly where a standard is aimed at achieving improvements to the environment.

A NES can set either a national standard, so that there is no local variation, or a minimum standard. While minimum standards provide an environmental bottom line which councils cannot go below, councils can impose stricter standards through rules in their own plans. A NES can also be developed that only applies to a certain area or matter.

National environmental standards may:

» prohibit an activity
» allow an activity, or state that an activity is permitted and does not require a resource consent as long as it does not have a significant adverse effect on the environment
» specify that a resource consent is required, the activity status of that resource consent (controlled, restricted discretionary, discretionary or non-complying) and the matters the council will consider when assessing the resource consent
» be absolute. This means that a council cannot be more lenient than the standard in its rules or in granting a resource consent, nor impose stricter controls
» specifically allow councils to develop stricter local standards through rules, resource consents or bylaws
» restrict a council from making a rule about, or granting resource consent to matters specified in the standard
» require a person to obtain a certificate stating than an activity complies with a term or condition imposed by a NES.

What is the impact of a NES?

A NES automatically applies to councils, who put it into practice when making resource consent decisions and through their plans. This means councils do not need to amend their regional or district plans if a new, more stringent NES is released.

Some NES apply immediately, while others have transitional periods to give councils the opportunity to make sure they can comply by a certain date.

A new NES does not affect existing resource consents. However, councils can review the conditions of existing water, coastal and discharge permits once a NES has been set.

How are national environmental standards developed?

There are three stages to developing a NES: scoping, consultation and finalising the standard.

Stage 1: Scoping and seeking approval to proceed

This stage involves the Ministry for the Environment (or other relevant Crown agency):

- defining the problem and issues
- identifying existing policy instruments and whether these are already adequate to address the problem and issues
- asking Cabinet to consider whether a NES should be prepared
- drafting a discussion document
- setting up a reference or technical group (optional)
- getting Cabinet agreement for the preparation of a proposed NES.

Stage 2: Public consultation

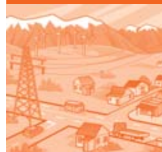
This stage involves:

- notifying the proposal and discussion document to the public and iwi authorities
- receiving submissions
- preparing and publishing a report on submissions.

Stage 3: Finalising the national environmental standard

This stage involves:

- preparing a report and recommendations for the Minister
- the Minister considering the report and recommendations along with a cost and benefit analysis, regulatory impact statement and business compliance cost statement, and the final policy for the proposed NES



» the Minister consulting with Cabinet
» the Parliamentary Counsel Office preparing the draft regulation
» publishing and publicly notifying the report, its recommendations and the cost-benefit analysis
» the Minister recommending the draft NES to the Governor-General
» the Governor General making the regulation by Order in Council.

How can I get involved with the development of a national environmental standard?

The main opportunity for members of the public to get involved is in stage 2, by making a submission on the draft proposal and its accompanying discussion document. Sometimes there may be earlier opportunities to comment, such as on issues and options papers prepared during the scoping phase. Earlier consultation tends to occur on a targeted basis with key interest groups.

National policy statements

The RMA enables the Minister for the Environment to prepare national policy statements (NPS) that outline objectives and policies for matters of national significance. Some factors the Minister might consider in deciding whether to prepare a NPS include whether an issue:

» affects more than one region
» affects New Zealand's interests and obligations in maintaining or enhancing the national or global environment
» is of significance because of the scale or nature of change to a community, or to natural or physical resources
» is of significance because of the environment's uniqueness, and the irreversibility or magnitude or risk of actual or potential effects
» affects a structure, feature, place or area of national significance
» concerns new technology, or a process that might affect the environment.

The New Zealand coastal policy statement

One NPS that already exists is the New Zealand coastal policy statement (NZCPS). It sets out a series of principles and policies for the sustainable management of New Zealand's coastal environment.

The RMA requires the Minister of Conservation to prepare a NZCPS, and that there must be a NZCPS at all times.

Section 58 of the RMA specifies what an NZCPS may contain, including objectives and policies about:

- national priorities for preserving the natural character of the coastal environment, including protection from inappropriate subdivision, use and development
- the protection of characteristics of the coastal environment of special value to tāngata whenua
- specific matters to be included in regional coastal plans, including any matters determined by the Minister of Conservation
- international obligations
- public access
- how the effectiveness of the NZCPS will be monitored
- the protection of recognised customary activities.

What is the impact of a national policy statement?

A NPS has two main impacts:

- Councils must amend their regional policy statements and regional and district plans to give effect to the NPS.
- Decision makers must consider the NPS as part of their decision-making process.

Amending regional policy statements and regional and district plans

A NPS sets out the process councils must follow to put it into practice in their RMA policy statements and plans. The RMA requires them to change their plans as soon as possible to put the NPS into practice, unless the NPS itself includes specified timeframes.

There are two ways a NPS is put into practice:

» Councils directly incorporate NPS provisions into their policy statements and plans without notification or a hearing, under Schedule 1 of the RMA.
» Councils amend their policy statements and plans, using the normal Schedule 1 process.

In the second instance, where councils are required to amend their policy statements and plans, they must follow the process in Schedule 1 of the RMA. This involves notifying the public of the amendment, receiving submissions, further submissions and holding hearings. This is not an opportunity for councils to change the NPS – rather it makes them focus on how their policy statements or plans will give effect to the NPS.

Anyone can be involved in this policy statement and plan change process. For further information see 'An Everyday Guide to the RMA' booklet 3.2 Making a Submission on a Resource Consent and booklet 5.1 Making a Submission on a Proposed Plan or Plan Change.

Considering the national policy statement as part of RMA decision-making

A NPS must also be considered in other RMA processes:

» Councils and the Environment Court must have regard to a NPS when making any decisions on a resource consent application.
» Councils and the Environment Court must have particular regard to any relevant NPS when considering a designation, or an application for a heritage order.
» A special tribunal and the Environment Court must have regard to any relevant NPS when considering an application for a water conservation order.

How are national policy statements developed?

Developing national policy statements is a four-stage process: scoping, drafting, consultation and public release.

Stage 1: Scoping and seeking approval to proceed

This stage involves the Ministry for the Environment (or other relevant Crown agency):

- defining the problem and issues
- identifying existing policy instruments and whether these are already adequate to address the problem and issues
- asking Cabinet to consider whether a NPS should be prepared
- engaging with iwi authorities and relevant stakeholders to seek their views
- setting up a reference or technical group (optional)
- getting Cabinet agreement to the preparation of a proposed NPS.

Stage 2: Drafting the national policy statement

This stage involves:

- drafting the proposed NPS
- undertaking relevant assessments and evaluations of the potential economic, social, cultural and environmental impacts of the proposed NPS. The formal processes for this are a section 32 evaluation under the RMA, a regulatory impact statement and a business cost compliance statement.

Stage 3: Public consultation

In this stage:

- the Government either appoints an independent board of inquiry to hear and decide on the NPS, or determines that an alternative process will be used (the opportunities for public input are described below)
- a report and recommendations are prepared
- a further evaluation of the impacts of the NPS (under section 32 of the RMA) is carried out.

Stage 4: Finalising the national policy statement

The final stage involves:

- the Minister considering the report and recommendations, further section 32 analysis, and a regulatory impact statement

- any final changes being made
- the NPS being approved by the Governor-General and issued by the Minister by notice in the New Zealand Gazette
- the NPS being publicly notified and coming into effect.

How can I get involved with the development of a national policy statement?

There are two opportunities to become involved in the development of a NPS:

- at the scoping phase – stage 1
- through public consultation – stage 3.

Stage 1: Scoping

When deciding whether to prepare a NPS, the Minister is required to seek input and comments from the relevant iwi authorities and any persons and organisations the Minister considers appropriate. The Minister relies on the Ministry for the Environment to do this. In some cases, this consultation may be targeted to specific audiences. In other cases, the Ministry may open the process to allow anyone to provide input and comments.

Stage 3: Public consultation

During its formal consultation phase, a NPS will go through either a board of inquiry process or an alternative process – each is described below.

The RMA guides the Minister on which course of action is most appropriate based on:

- the advantages and disadvantages of developing the NPS quickly
- the extent to which the NPS differs from existing policies
- whether there has been any recent and relevant public consultation and debate on the same subject.

1. A board of inquiry

A board of inquiry will generally be chaired by a current or former Environment Court Judge, with two-to-four other members who have expertise in the relevant subject matter.

A board of inquiry must publicly notify the proposed NPS, establish a process for receiving public submissions and hold hearings at which submitters can be heard. The process is usually advertised in public notices in national and local newspapers and on the Ministry for the Environment website.

The timeframe for submissions is set by the board, and will vary depending on the subject matter. How long hearings take depends on the number and nature of submissions.

2. Alternative process

Where the Minister for the Environment has decided to follow an alternative process to develop a NPS, he/she must establish and use a process that gives the public and iwi authorities adequate time and opportunity to make a submission. Unlike the board of inquiry process, there is no requirement for hearings to be held. Once submissions have been made, a report and recommendations on the submissions and the proposed NPS must be made to the Minister.

Water conservation orders

What is a water conservation order?

A water conservation order (WCO) recognises the outstanding amenity or intrinsic values that a specific water body provides, in either a natural or modified state. WCO's can be used to preserve that natural state or protect characteristics such as:

- the water body's value as a habitat or fishery
- its wild and scenic nature
- its value for recreational, historic, spiritual, cultural or scenic purposes.

WCOs may be applied over rivers, lakes, streams, ponds, wetlands or aquifers. They can cover fresh water or geothermal water.

What is the impact of a water conservation order?

A WCO can prohibit or restrict a regional council issuing new water and discharge permits, although it cannot affect existing permits. Once a WCO is made, councils need to ensure that their regional policy statements, regional plans and district plans are not inconsistent with its provisions. Councils cannot grant water, coastal or discharge permits that are contrary to the restrictions, prohibitions or provisions of a WCO.

How are water conservation orders developed?

Anyone can apply to the Minister for the Environment for a WCO, setting out the reasons for the application. If the application meets specific criteria, the Minister must appoint a special tribunal to hear and report on the application, or reject it. A special tribunal must have between three and five members, including a Chair, who are all appointed by the Minister.

The process for developing a WCO has three stages: assessment, consultation and finalising the WCO.

Stage 1: Assessing the application

In this stage:

» the Minister considers the application to decide whether it meets the criteria set out in the RMA. If it does, the Minister must appoint a special tribunal. The Minister can request further information, or reject the application.

Stage 2: Public consultation

If the application is accepted:

» the special tribunal notifies the application

» a submission period of no fewer than 20 working days is set

» hearings are held

» a report is sent to the applicant, Minister, the regional council, the relevant territorial authorities, the relevant iwi authorities, and every person who made a submission

- the applicant and submitters have the right to make submissions to the Environment Court on the special tribunal's report and recommendations
- if submissions are made to the Environment Court, it will hold an inquiry and provide a report and recommendations to the Minister about whether the special tribunal report should be rejected, accepted or modified.

Stage 3: Finalising the water conservation order

In the final stage:

- the Minister considers the report from the special tribunal or, if an inquiry has been held, the Environment Court, and decides whether to make the WCO
- the Minister must find in accordance with the relevant report, or reject it and provide reasons
- the Governor-General makes the WCO by Order in Council.

Getting involved in the development of a water conservation order

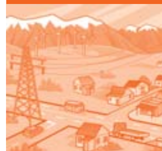
The primary opportunity for getting involved in the development of a WCO is by making a submission on the application to the special tribunal. Once the special tribunal has issued its report, anyone who made a submission can choose to make a further submission to the Environment Court on the special tribunal's report. The Environment Court must hold a public inquiry if it receives one or more submissions.

Ministerial intervention on proposals of national significance under the RMA

In certain circumstances the Minister for the Environment can intervene in the decision-making process for:

- a resource consent application
- a designation or a heritage protection order
- a request that a regional plan be prepared or a change made to a plan.

The Minister of Conservation can intervene on matters that relate solely to the coastal marine area.



Where a matter relates partly to the coastal marine area, then the decision to intervene will be jointly decided by both Ministers.

When may a Minister intervene?

The Minister (for the Environment or of Conservation) can be formally requested to intervene by either the applicant for the proposal or by the council that would ordinarily make the decision. Alternatively, a Minister may choose to intervene on his or her own volition.

From time-to-time, a Minister may also receive suggestions from the public that he or she should intervene. While these are not formal requests, the Minister can decide to intervene on an issue raised by a member of the public.

Any request to the Minister needs to be made **in writing** as early as possible to allow sufficient time to assess the matter and decide if and how to intervene.

How do the Ministers decide if a proposal is of national significance?

The relevant Minister must assess several factors when considering whether to intervene, including whether the matter:

- has aroused widespread public concern or interest about its actual or likely effect on the environment, including the global environment
- involves, or is likely to involve significant use of natural and physical resources
- affects, or is likely to affect any structure, feature, place or area of national significance
- affects, or is likely to affect more than one region or district
- affects, or is likely to affect, or is relevant to New Zealand's international obligations to the global environment
- involves, or is likely to involve technology, processes or methods which are new to New Zealand and which may affect the environment
- results, or is likely to result in or contribute to significant or irreversible changes to the environment, including the global environment

» is significant, or is likely to be significant in terms of section 8 of the RMA (Treaty of Waitangi).

The Minister must also consider whether the council that would ordinarily be responsible for processing and determining the matter:

» has the capacity to do so. That involves looking at its financial, logistical and human resources, its experience and policy framework, and any other commitments it has at the same time
» thinks it appropriate for the Minister to intervene. The relevant Minister will ask the council whether it considers that he or she should intervene.

In what ways can the Ministers intervene?

There are five ways in which Ministers can intervene:

» call in a matter of national significance
» make a submission on the matter on behalf of the Crown
» appoint a project co-ordinator to advise the council on anything relating to the matter
» direct the councils to hold a joint hearing if the matter involves more than one council
» appoint an additional hearings commissioner to a hearings panel, if the council decides that commissioners should be used.

Each option is described below, and the Ministers can choose to use one or several for the same matter.

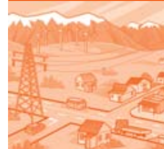
What is a call in?

A Minister can call in a matter by referring it to:

» a board of inquiry to make the decision
» the Environment Court to make the decision.

In either case, the council no longer has the role of deciding the matter as it ordinarily would.

A board of inquiry is appointed by the Minister and has between three and five members. The chairperson must be a current or former Environment Court Judge.



The procedures used by a board of inquiry and the Environment Court are similar – a hearing is held, submitters have an opportunity to be heard, and cross-examination may be permitted.

The principal differences are:

» The board of inquiry process includes preparation of a draft report which is made available to the applicant, local authority, any submitters and the Minister for comments before a final report, which includes the decision, is issued. The Environment Court is not required to produce a draft report before issuing its decision.

» The board of inquiry's report can include recommendations relating to plans, regional policy statements and national policy statements. The Environment Court can order changes to plans and regional policy statements.

How is a proposal called in?

Once a Minister has decided to call a proposal in, he/she must, as soon as possible, advise the relevant councils in writing, and explain the reasons why.

Where a council has already determined that a hearing is not required, before it issues its decision or recommendation the Minister may serve notice that the matter will be called in.

If the council has already determined that a hearing is to be held, the Minister must serve notice that the matter will be called in no fewer than five days before the the hearing is due to begin.

Once the Minister has decided to call in a proposal, he or she must give public notice that explains:

» why the matter has been called in

» what has been called in

» where information on the matter may be viewed

» that submissions can be made by any person and must be made to the Minister

- when submissions close (this must be no fewer than 20 working days after the date of public notification)
- the Minister's and applicant's address for service.

This must be done whether or not the council has already previously publicly notified the proposal.

The council must also:

- provide the Minister with all relevant information, including any submissions that have already been received
- send a copy of the direction to the people promoting the proposal
- give notice of the direction to the owner(s) and occupier(s) of the land to which a matter relates and all adjacent land, and to every person who has made a submission.

How can I get involved in a call in?

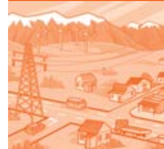
Anyone can make a submission to the Minister on a matter that has been called in to the Environment Court or a board of inquiry. Where the proposal has already been publicly notified, any submission already made to the council is considered as a submission to the Minister. Anyone who has made a submission can be heard.

A board of inquiry's decision can only be appealed to the High Court on questions of law by parties who were sent copies of the board's decision (see section 149A of the RMA).

An Environment Court decision can be appealed to the High Court on questions of law by anyone who was party to the original proceedings before the Environment Court.

What does a Crown submission involve?

Ministers and government agencies can make submissions on a matter of national significance just like any other party. A Crown submission is a single statement that represents the collective view of all relevant Ministers and government agencies, combining and integrating their various experiences, expertise and resources.



What does a project coordinator do?

The role of a project coordinator is to advise the council and, as such, is an additional resource for the council to use. A project coordinator can help organise hearings, coordinate any experts, and provide liaison between consent agencies.

What is a joint hearing?

A joint hearing is a hearing that involves representatives from two or more councils, making the process more efficient and integrated.

A joint hearing avoids the need for multiple hearings where several resource consents are required, where the same change is proposed to two or more plans, when a proposal of national significance crosses the boundaries of multiple territorial authorities, or when it requires consent from both a territorial authority and a regional council.

While councils already routinely hold joint hearings without direction from the Minister, this power acts as a backstop to ensure that joint hearings are held when it makes sense to do so.

What does the appointment of a hearings commissioner involve?

Councils often appoint independent commissioners in place of or alongside elected representatives to hear and decide on resource consent applications, and make recommendations on designations and plan changes. Commissioners act under delegated authority and are often used when highly complex or technical issues are under debate, when there may be a conflict of interest, or simply when the volume of hearings makes the use of councillors unfeasible.

When appointing a hearings commissioner, the relevant Minister will seek a person who has expertise in the matter.

Who pays when a Minister intervenes?

The Minister and the relevant councils can seek to recover costs from whoever made the application. Other costs are expected to 'lie where they fall'.

The Minister has established a Cost Recovery Policy for Proposals of National Significance that guides the recovery of costs by the Minister.

How can I make a good submission?

Whatever national RMA process you are involved in, it is important that your submission is clear and concise and addresses what you either support or oppose in the proposal. This is particularly important where the process does not involve a formal hearing, as you will not have the opportunity to be formally heard and expand on any points raised in your submission.

For more information see 'An Everyday Guide to the RMA' booklet 3.2 Making a Submission on a Resource Consent and booklet 5.1 Making a Submission on a Proposed Plan or Plan Change.

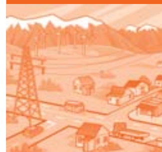
What can I expect when I am being heard by a board of inquiry, special tribunal or the Environment Court?

Board of inquiry, special tribunal and Environment Court hearings are generally more formal in nature than a council hearing. There is likely to be a larger number of people involved, including experts and lawyers, who may take a longer time to present their case than they would at a council hearing.

Just as at a council hearing, members of the board, tribunal or Court can question both the applicant and submitters. However, unlike a council hearing, there are no subsequent right of appeal to the Environment Court for a decision made by a board of inquiry or special tribunal. This means that the case that you present must be clear, concise, well reasoned and cover all points of concern.

Prepare yourself well:

- Prepare a written statement to read out at the hearing. You should identify key points you want to raise and make sure that these are covered. Be specific about your concerns, how you want them addressed, and what you want the outcome to be.
- Practice reading your statement.
- Think about questions that the board or tribunal members or Court might ask, and how you might answer them.



In presenting your submission, you should:

- read your statement slowly and clearly
- stick to the facts in your statement
- focus on the environmental matters and effects
- back up any statements you make with clear evidence
- expand on your submission, but don't introduce any new issues
- don't repeat yourself or be long-winded
- don't play on emotions, breach protocol or get distracted by personal issues or past disputes
- use experts or lawyers if you need them to support you.

For more information see 'An Everyday Guide to the RMA' booklet 3.3 Appearing at a Resource Consent Hearing and booklet 5.2 Appearing at a Council Plan or Plan Change Hearing.

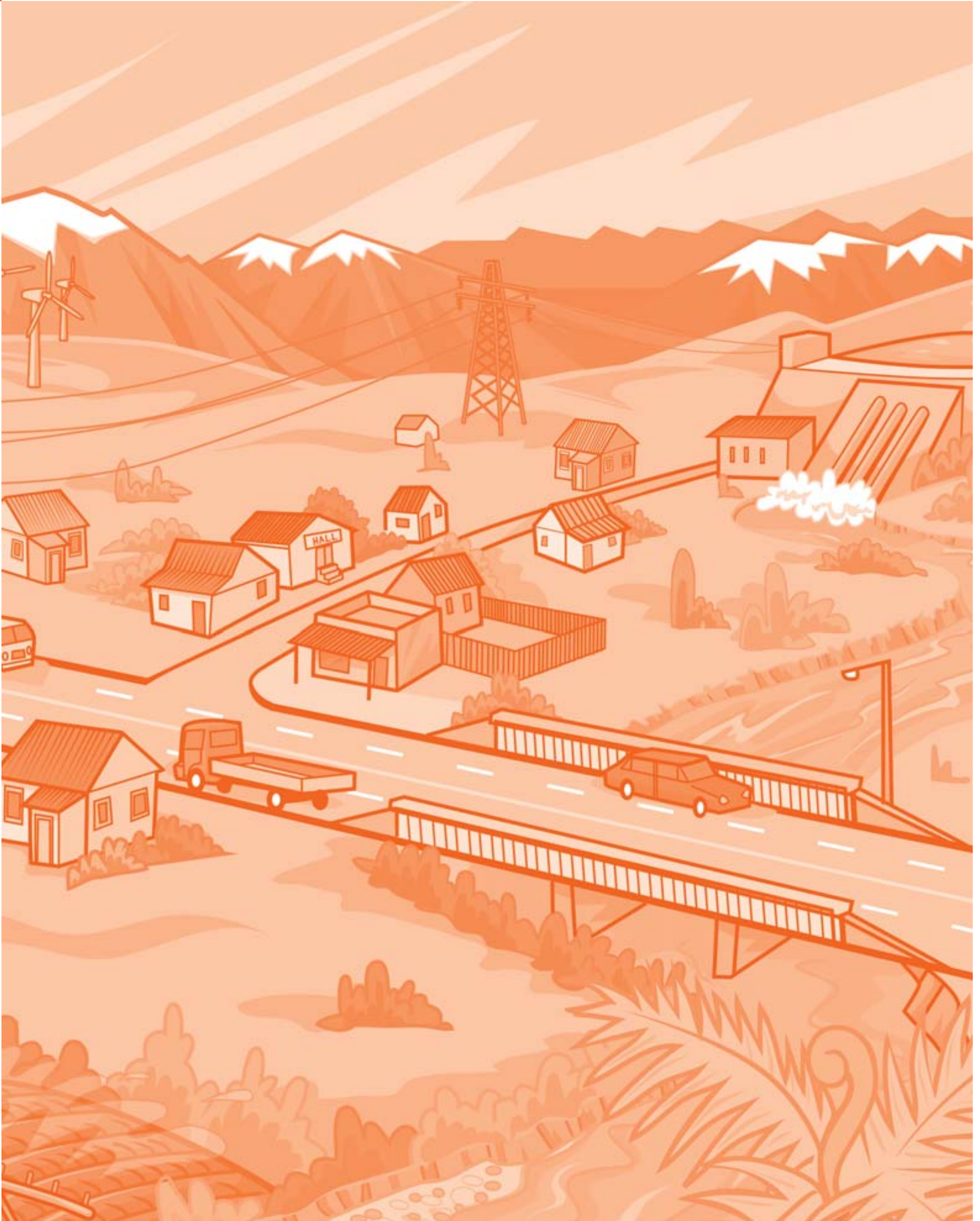
Cross-examination in call-in processes

Cross-examination generally only occurs in the Environment Court, and does not occur in council hearings.

A board of inquiry appointed to hear a matter of national significance that has been called in by a Minister may also allow cross-examination.

Cross-examination allows lawyers for the applicant or a submitter to ask questions of the opposing party's witness(es), including any submitters even if they don't have a lawyer representing them.

Therefore, where a board of inquiry has chosen to allow cross-examination, you should prepare yourself to be cross-examined. In particular, you should carefully think about any questions that you might be asked, particularly in areas where you disagree with the party that will be cross-examining you.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Disclaimer

Although every effort has been made to ensure that this guide is as accurate as possible, the Ministry for the Environment will not be held responsible for any action arising out of its use. Direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

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For more information on the Resource Management Act:

↘ www.rma.govt.nz

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