



Ministry for the  
**Environment**  
*Manatū Mō Te Taiao*

# Pre-Hearing Meetings

A Practical Guide for Councils

ENCOURAGING  
Excellence  
in RMA practice

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## Pre-Hearing Meetings: A Practical Guide for Councils

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# Pre-Hearing Meetings

## A Practical Guide for Councils



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## Introduction

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This is a practical guide for council staff and councillors who are involved in conducting pre-hearing meetings under the Resource Management Act 1991 (RMA). It is an ideal complement to hands-on training in running such meetings.

Pre-hearing meetings are a “good practice” tool provided for in the RMA. They can be held at any time before a hearing, even before an application for a resource consent is lodged. They aim to clarify issues and resolve disputes in what is an often adversarial process.

While it may not always be appropriate to hold a pre-hearing meeting (depending on the attitudes of the parties involved), they can produce more sustainable results and greater satisfaction for all involved. By being involved in making decisions the applicant and submitters “own” the result far more than if the decision is made by someone else.

The informality of pre-hearing meetings often allows parties to be more creative in finding mutually acceptable solutions. This is especially important where the council, applicant and interested parties need an ongoing relationship. Even when a hearing is subsequently required, pre-hearing meetings can help in clarifying the issues enabling the hearing to be more focused and less adversarial.

All councils need to set clear procedures for holding pre-hearing meetings. This should include criteria for deciding when to hold them and active encouragement for using them when suitable.

Timing is also important - the earlier a pre-hearing meeting is held the better. Many councils hold a form of pre-hearing meeting before an application is lodged. Avoiding conflict and misunderstanding at this stage is more efficient than dealing with it through the formal statutory process.

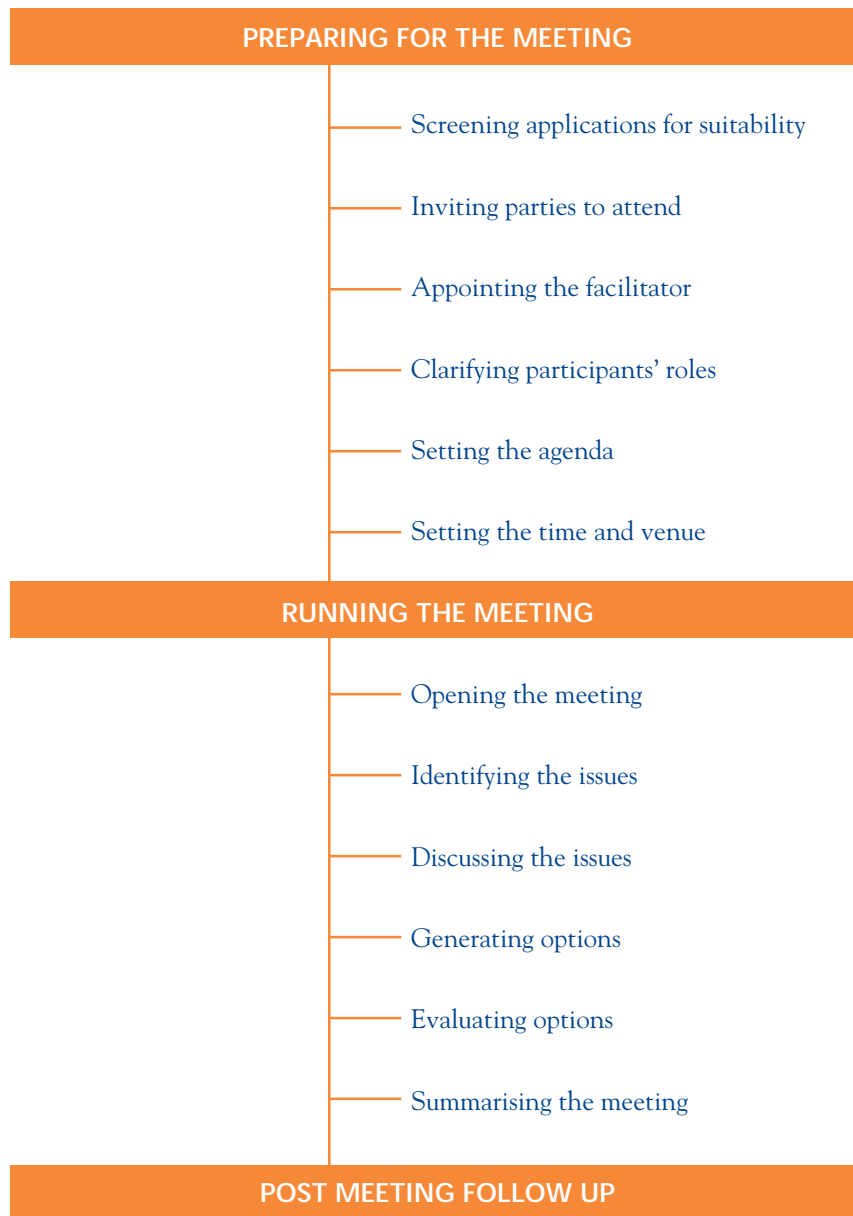
Pre-hearing meetings are not a magical solution to conflict under the RMA. They are a tool that councils need to be aware of and able to use. This guide aims to make this possible. It presents best practice, but not hard and fast rules, as each pre-hearing meeting will be different and have different requirements.

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## How to use this guide

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This guide is organised according to the different stages of organising a pre-hearing meeting:



The explanation of the pre-hearing meeting process includes additional useful information. For example, the section on 'Preparing for the Meeting' begins with an outline of what councils should have in their policy on pre-hearing meetings. The section on 'Running The Meeting' includes vital information on the legal protocols applying to pre-hearing meetings. It also provides useful advice on dealing with difficult behaviour.

A lot of information has been provided in checklist form for easy reference. These checklists are arranged for easy photocopying, so they can be used in training courses and as a useful reference. Information is also provided for councils to give to applicants and submitters to explain the pre-hearing meeting process. This may be incorporated into councils' own information pamphlets.



## Section 1: Preparing For A Meeting



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## Section 1: Preparing for the Meeting

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Good preparation is vital for effective pre-hearing meetings.

**Preparing for pre-hearing meetings involves:**

- having a clear council policy on holding such meetings
- deciding whether the application is suited to a pre-hearing meeting
- inviting people to attend the meeting
- appointing a facilitator and clarifying the participants' roles
- preparing a draft agenda
- setting the venue and time.

Effective pre-hearing meetings need:

- to respond to the participants' **desired results** and **personalities**
- a **pathway** with logical steps that make sense to the participants
- an **atmosphere of safety** to encourage people to explore ideas
- clearly defined roles for the facilitator, recorder and participants
- a **clear agenda** that is **achievable** within the time allowed.

### 1.1 Need for council policy

Councils should provide their staff with a clear policy on holding pre-hearing meetings. This policy should:

- provide criteria for holding the meetings
- encourage holding meetings before applications are formally lodged
- support using section 37 to extend statutory time limits where necessary
- provide guidance on when decision-makers are bound by decisions made at the meeting
- provide guidance on who will conduct the meetings and the training they will receive
- recognise the public benefits of pre-hearing meetings when considering cost recovery and setting fees.

#### Meeting Time Limits

The RMA allows only 25 working days between the close of submissions and the hearing; a difficult time limit for organising, holding and reporting on pre-hearing meetings.

However, section 37 provides a legitimate procedure for extending these time limits, taking into account:

- (a) the interests of anyone who may be directly affected by the extension
- (b) the interests of the community in achieving an adequate assessment of the effects of any proposal
- (c) the council's duty to avoid unreasonable delay.

These extensions should generally not more than double the maximum time specified by the Act. However, time limits can be extended indefinitely if necessary, again taking into account matters (a) to (c) above, and if the applicant agrees.

## 1.2 Checklist for screening applications for Pre-Hearing meetings

Criteria	Yes	No
1 Do the applicant/submitters/council need an opportunity to better understand the available environmental, technical, cultural, social, economic and planning information?	<input type="checkbox"/>	<input type="checkbox"/>
2 Do the applicant's and submitters' needs appear the same, or at least not in conflict?	<input type="checkbox"/>	<input type="checkbox"/>
3 Would it be helpful to seek agreement on any additional information the parties need for further informal meetings or for a hearing?	<input type="checkbox"/>	<input type="checkbox"/>
4 Do the issues need to be clearly identified?	<input type="checkbox"/>	<input type="checkbox"/>
Do the applicant/submitters/council need to agree on the issues?	<input type="checkbox"/>	<input type="checkbox"/>
Would it be possible to develop an understanding of the different viewpoints?	<input type="checkbox"/>	<input type="checkbox"/>
5 Are there any tangata whenua issues that need to be understood by the applicant/submitters/council?	<input type="checkbox"/>	<input type="checkbox"/>
Is there information or options that the applicant/tangata whenua representatives/submitters/council might find useful to exchange at a face-to-face meeting?	<input type="checkbox"/>	<input type="checkbox"/>
6 Are the parties willing to participate and exchange information?	<input type="checkbox"/>	<input type="checkbox"/>
7 Would the situation be helped by people jointly identifying and evaluating a range of options that might lead to:		
- an increased understanding of the application	<input type="checkbox"/>	<input type="checkbox"/>
- an amended application?	<input type="checkbox"/>	<input type="checkbox"/>
8 Are the necessary time and resources available to the council/applicant/submitters for a meeting?	<input type="checkbox"/>	<input type="checkbox"/>

### 1.3 Checklist for inviting parties to attend

- Before submissions are received, discuss the pre-hearing process with the applicant and obtain their approval in **principle** to proceed if it is appropriate.
- When submissions are received, provide information on pre-hearing meetings with the receipt of submissions.<sup>1</sup> Include a summary of other submitters' concerns.
- Contact all parties to see if they are interested in participating. It may be useful to include on the submission form a question about their willingness to participate in a pre-hearing meeting.
- Check with parties what times and venue would be appropriate, and if they have any special requirements.
- If iwi are involved, check if they require particular protocols.
- If a pre-hearing meeting is to be held, provide all parties with written confirmation of its time and venue, who will attend, how the meeting will be conducted and a draft agenda. Ask parties to confirm their attendance.
- Phone the parties a few days before the meeting as a reminder.

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<sup>1</sup> Note that acknowledging the receipt of submissions is a good practice rather than a statutory procedure

#### 1.4 Appointing the facilitator

Facilitating a pre-hearing meeting can be demanding. It takes special skills and ongoing training to deal with potentially difficult people and tense situations.

Facilitators for pre-hearing meetings need:

- listening skills
- effective communication skills
- the ability to maintain a neutral stance
- confidence in dealing with a range of people
- the ability to respond appropriately during potentially tense situations
- a knowledge of the law and the pre-hearing meeting process
- an understanding of the issues to be discussed.

The facilitator also has to be **seen** to be independent. It is vital to establish and maintain the trust of everyone involved; if they think the facilitator has any kind of bias they will be less inclined to participate effectively in the meeting (if at all).

The decision-maker or recommending officer should not be the facilitator. Instead, consider appointing another staff member or councillor. Appointing an independent facilitator is probably necessary only if the meeting involves contentious issues.

**One cost-effective practice is to have a number of staff and councillors available as facilitators and to ‘swap’ their services with other councils.**

This means the facilitators are specifically skilled in pre-hearing meetings but are also independent. It also has the advantage of promoting good relations between councils.

If the meeting involves a large number of parties, it may be necessary to appoint a co-facilitator to help.

### **The Facilitator's Role**

A facilitator is an impartial person who works with parties to help them explore and, if appropriate, reach a mutually acceptable resolution of some or all of the issues in dispute. They have no decision-making authority, but provide a positive and non-threatening environment for clarifying and resolving issues.

The facilitator ensures that the meeting is properly organised (see checklist, page 20), then during it:

- establishes the meeting rules
- keeps the meeting 'on track'
- takes responsibility for following the process and suggesting changes
- offers enthusiasm and direction and encourages interaction
- deals with unhelpful behaviour
- checks that all opinions and ideas have been acknowledged and agreements recognised.

## **1.5 Clarifying participant's role**

### **(a) Parties attending the meeting should:**

- follow meeting guidelines
- participate constructively
- suggest changes to the agenda and how the meeting is run when appropriate.

### **(b) The consent authority**

Councillors may or may not participate at the meeting, depending on council policy. If the decision-maker is to attend, all parties must agree to it. Council representation should be kept to a minimum so that it does not appear to dominate the meeting. If practical, key staff can be called on as they are required.

*At the meeting council staff or councillors can:*

- make an introductory statement
- briefly outline the RMA's requirements in relation to the application
- participate in discussion only as required.

### **(c) The recorder**

The role of the recorder needs to be clearly stated. It may be appropriate to record the meeting using a whiteboard, so that everyone can see what is being noted.

*At the meeting, the recorder:*

- notes the issues raised, key alternatives and decisions reached
- summarises key points for all to see, either on their own or with the facilitator
- highlights repeated or emphasised points
- might participate to provide clarification.

## 1.6 Setting the agenda

It's a good idea to prepare a draft agenda and to circulate it to the parties before the meeting. Set the agenda in liaison with the participants, providing them with the opportunity to comment on it and to suggest changes.

### Define the Purpose of the Meeting

Meeting agendas need a clearly stated objective covering:

- What needs to be achieved (the meeting purpose)
- What success will look like.

The meeting's structure will depend on its purpose, which may include:

- giving information
- receiving information
- achieving interaction
- reaching agreement
- achieving participation in problem solving.

For example, if the meeting's purpose is to reach agreement on an issue, start the meeting purpose statement with:

To seek agreement on ...

eg To seek agreement on the effects of using herbicide along the waterway.

### Set the Agenda

Agendas comprise:

- a statement of purpose or the desired results
- phases
- topics
- methods
- timing.

They enable participants to understand one another by allowing them to discuss the same topics in the same way at the same time.

## Designing a meeting agenda

### The meeting's purpose

What do you hope to achieve at the meeting?

What might be achievable within its time limits?

Is the desired result of benefit to everyone concerned? Ensure that everyone gains from the meeting's purpose.

Might it be possible to reach agreement on some issues?

### What topics will be discussed?

List the topics in order of discussion. This will depend on whether the meeting starts with understanding the problem or whether the problems need to be clarified.

Check the topics fit within the meeting's phases,

eg, Defining issues —————> analysing issues.

Do the topics require giving information - discussing information - gathering ideas - reaching agreement?

### How will these topics be discussed?

Identify the best way to exchange information and ideas on each topic. Some methods are covered in this Guide.

### How long will it take to discuss each topic?

Estimate how long each phase of the meeting will take. For example, if you have 15 people present with half of them speaking on a topic for approximately three minutes, plus the facilitator summarising, and including brief silences, the time commitment for this topic is approximately 25 minutes.

### Phases of a Pre-Hearing meeting

When writing an agenda identify the topics that fit with each of the meeting phases. This ensures problems and issues are understood before discussion concentrates on potential solutions.

Phase	Method & Task	Time
1 Introduction		
2 Define the problem/issue		
3 Analyse the problem/issue		
4 Generate options		
5 Evaluate options		
6 Decision-making		
7 Next steps		

## Sample Agenda

<b>Agenda for:</b>	<b>PROPOSAL FOR A CAR 'DRAG STRIP'</b>	
<b>Date:</b>	25 December 1998	
<b>At:</b>	High Church Meeting Room, Haven Square	
<b>Meeting Purpose:</b>	To understand what people value and seek to preserve in the Resthaven area.  To understand what the 'drag strip' proposal hopes to achieve.	
<b>Topic (Examples)</b>	<b>Method (Examples)</b>	<b>Approx. Time</b>
Introduction	The facilitator will explain how the meeting will run, the rules and what happens to information from today's meeting.  The facilitator will seek approval of the agenda.	15 min.
Understand what is important about the Resthaven area	Hear why the applicant wishes to build a drag strip and in this particular area. List.  Hear what submitters need to see protected in the area.  Identify concerns. List.	30 min.
Identify the issues that need to be discussed.	The facilitator will summarise their understanding of the key matters for further discussion and check these are correct.	10 min.
Discuss the topics causing concern.	Presentations by Jo Applicant and Neighbourhood Action chairperson.  This is a chance to exchange information.  The facilitator will summarise any common ground and differences that have been identified.	1 hour
Next steps	Agree on what happens after this meeting. Is another meeting wanted?  Facilitator will explain how the meeting summaries will be handed out and checked for accuracy.	15 min.

### 1.7 Setting the time and venue

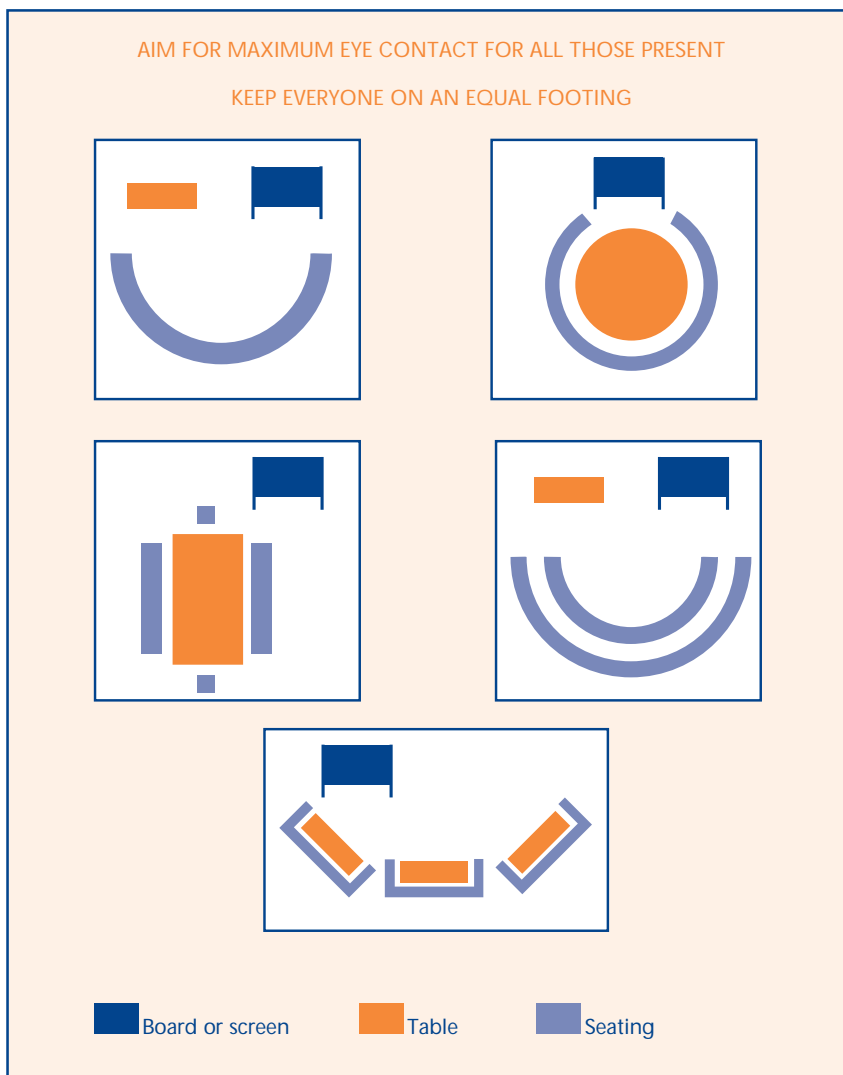
The time of the meeting should be set in liaison with the participants. If there are only a small number of people it may be possible to hold a meeting during the day. However, daytime meetings may impose significant costs on submitters who work during the day - particularly if they involve a number of meetings. You should also consider the needs of shift workers and parents with young children.

Holding a meeting at the council offices sets quite a formal atmosphere, which can be an advantage in focusing participants' attention on the issue. Councils also tend to have meeting rooms of different sizes (depending on numbers attending), access to tea and coffee making facilities (this helps to 'break the ice') and access to the necessary equipment.

However, on-site meetings may be more convenient for applicants/submitters. It pays to have an indoor venue for at least part of the meeting, unless there are only a few people attending.

A "roundtable" or semi-circular setting with the facilitator in front allows all parties to feel equally involved. Placing rows of chairs with the facilitator in the front should be avoided, but may be necessary when dealing with a large number of parties.

Possible room layouts are shown below:



## 1.8 Facilitator's checklist for pre-meeting organisation

1. Develop an understanding of the application.	<input type="checkbox"/>
2. Identify concerns and relevant issues from submissions.	<input type="checkbox"/>
3. Visit the site, if not already familiar with it.	<input type="checkbox"/>
4. Understand any information required to make informed decisions.	<input type="checkbox"/>
5. Discuss pre-hearing meetings with the applicant.	<input type="checkbox"/>
6. Decide whether a meeting is appropriate by checking the criteria and noting any other relevant factors.	<input type="checkbox"/>
7. Identify who is to attend the meeting.	<input type="checkbox"/>
8. Assess the positions and needs of all parties and develop strategies to assist discussion.	<input type="checkbox"/>
9. Develop the agenda.	<input type="checkbox"/>
10. Send material on pre-hearing meetings to submitters.	<input type="checkbox"/>
11. Follow-up phone call to submitters to gauge their response - time/venue, special needs/equipment.	<input type="checkbox"/>
12. Appoint a recorder if necessary. Arrange for necessary council staff and councillors to attend, if required.	<input type="checkbox"/>
13. Check the availability of people who will be needed to provide advice.	<input type="checkbox"/>
14. Book the venue and ensure equipment is available.	<input type="checkbox"/>
15. Confirm time and venue in writing. Send out all relevant material (eg summary of submissions) including the proposed agenda.	<input type="checkbox"/>
16. Arrange for tea/coffee/water to be available.	<input type="checkbox"/>

<b>2-3 days before the meeting:</b>	
1. Call all parties to remind them of the meeting.	<input type="checkbox"/>
2. Confirm availability of tea/coffee.	<input type="checkbox"/>
<b>Just before the meeting:</b>	
1. Advise reception of the meeting.	<input type="checkbox"/>
2. Clearly identify the venue (sign on door).	<input type="checkbox"/>
3. Ensure venue is laid out. Do the whiteboard markers work? Is there a duster?	<input type="checkbox"/>
4. Ensure venue is tidy. Are the whiteboards clean?	<input type="checkbox"/>



## Section 2: Running the Meeting



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## Section 2: Running the Meeting

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### The Ideal Process

- Agree to ground rules
- Maintain good attitudes - keep the relationship going - respect each other
- State the meeting's purpose and goals
- Determine areas of agreement/disagreement
- Agree on the problem
- Determine where issues may be resolved or discussed
- Generate options
- Evaluate options
- Agree on a solution
- Report back on the result of the meeting

### 2.1 Protocols

A 'good practice' set of protocols includes the following:

- All relevant parties are notified of the meeting and allowed to participate fully
- If a party is unable to attend, the facilitator finds out why and attempts to resolve any issues involved
- Councillors and staff are to be seen as impartial
- The decision-maker attends only if all parties agree
- Participants establish at the beginning of the meeting whether it is to be held 'without prejudice' to any subsequent proceedings
- The meaning of "without prejudice" is established at the beginning of the meeting
- The meeting agrees to a procedure for handling minutes if some parties do not attend
- If the result is reported, it goes to all parties and is considered in council decisions.

### What the RMA Says

Section 99 of the RMA provides the opportunity for holding pre-hearing meetings to clarify issues and resolve disputes in the consent process. The only guidance it gives is that:

- holding and attending a pre-hearing meeting is discretionary
- the decision-maker should only attend if the parties agree and the consent authority is satisfied that the person should not be disqualified
- if the result is reported, the report must be circulated to all parties. It must be part of the information that the consent authority considers in the application.

### Principles of Natural Justice

If there is no statutory procedure to follow a council may, in accordance with the rules of natural justice, determine the procedures for its own meetings. These common law rules have been described as ‘a duty lying on everyone who decides anything’ to ‘act in good faith and listen fairly to both sides’. They divide neatly into two broad principles: the right to be heard, and that no person may be the judge of their own cause.

The right to be heard requires that each party is given a reasonable opportunity to state their case or answer to a case. This means all the relevant parties should be given notice of the pre-hearing meeting and allowed to participate fully.

The principle that no one may judge their own cause requires councillors and council staff participating in pre-hearing meetings to act in good faith and without bias. They must be **seen** to be impartial. There should be no actual bias ie, a direct financial interest in the case, some relationship to a party, or a personal prejudice or preference towards a party or that party’s case.

These legal issues are also important when deciding **who** should facilitate a pre-hearing meeting.

### Without Prejudice

Pre-hearing meetings are often held ‘without prejudice’, a term that seems to mean different things to different people. It usually means that the meeting’s contents are confidential and may not be referred to in any subsequent arbitration or court proceedings, but this needs to be established at the beginning of the meeting.

When a number of issues and options are discussed, parties should be required, at least in the initial stages of discussion, to maintain confidentiality. They may not (without the consent of the other parties) rely on, or introduce as

evidence in any subsequent proceedings, anything that has been discussed at the meeting.

The facilitator needs to establish early in the first meeting whether it is to be held without prejudice or if its minutes are to be reported. A combination approach may be adopted, as long as everyone is clear what applies at each point of discussion. If more than one meeting is to be held, it may be appropriate to hold the first without prejudice so that parties can decide whether to report the minutes of future meetings.

Alternatively, all parties could sign a memorandum of confidentiality. Any agreement reached could be excluded from the memorandum at a later date. However, this may appear to conflict with a process that is designed to be informal and open – and may see all parties consulting their lawyers. Experience shows that lawyers are not always particularly helpful to the process, unless they are able to leave their advocate’s hat at home and act as observers so parties have ready access to advice.

#### **When All Parties Do Not Participate**

Some parties may not agree to participate, or one or more parties may be unable to make the agreed meeting. This is particularly likely with meetings involving a large number of parties.

In this case, it may still be useful to hold a meeting to clarify issues. However, the facilitator should find out before the meeting why parties are unable to attend. For example, submitters may not attend because they feel intimidated by, or do not clearly understand, the process. A simple phone call may be all that is needed to change their minds.

The facilitator will need to establish an agreed procedure for parties not attending. For example, will they be entitled to the minutes? Such a decision should be made at the opening of the meeting and may depend on why the party (or parties) is absent. Sending them minutes ensures everyone has the same information and should be encouraged. The ‘without prejudice’ and confidentiality rules need to be attached.

If more than one meeting is required, distributing minutes to the absent parties should be discussed before the meeting closes - particularly if they may be able to attend the second meeting. In this case, the facilitator should discuss the minutes with the absent parties before the next meeting - avoiding the possibility of their using the second meeting to revisit matters already discussed.

## 2.2 Suggested meeting outline

This outline shows the different phases and steps of a meeting. The steps will vary case by case. Each phase is discussed in more detail in the following sections.

What	Method & Task	Time
Introduction	<ul style="list-style-type: none"> <li>• Introductions</li> <li>• Discuss the meeting's objectives</li> <li>• Clarify the role of the facilitator and others</li> <li>• Get agreement on ground rules</li> <li>• Discuss the meaning of 'without prejudice'</li> <li>• Decide how the meeting summary will be distributed</li> <li>• Invite questions on process</li> <li>• Outline the relevant RMA considerations</li> </ul>	
Applicant speaks to application	<ul style="list-style-type: none"> <li>• Ask applicant to speak</li> <li>• Hold questions until everyone has spoken</li> </ul>	
Participants outline their concerns, issues, support or objections to application	<ul style="list-style-type: none"> <li>• Ask participants to summarise their point of view</li> <li>• Hold questions until everyone has spoken</li> <li>• Invite input from technical experts</li> </ul>	
Identify issues	<ul style="list-style-type: none"> <li>• Summarise issues on whiteboard (divide into RMA and non-RMA matters)</li> <li>• Discuss these issues with participants, make changes by agreement</li> <li>• Get agreement on issues to be discussed in detail</li> </ul>	
Discuss issues	<ul style="list-style-type: none"> <li>• Participants question each other, exchange ideas and gather information</li> <li>• Find out what people need</li> </ul>	
Generate options	<ul style="list-style-type: none"> <li>• Areas of potential agreement summarised</li> <li>• Explain options being generated but not evaluated yet</li> <li>• Ask for options, list ideas</li> </ul>	
Evaluate options	<ul style="list-style-type: none"> <li>• Decide on objective criteria</li> <li>• Discuss all suggestions</li> <li>• Summarise areas of agreement</li> <li>• Ask how further information should be gathered, by whom, and with what instructions</li> <li>• Discuss advantages/disadvantages of each option</li> </ul>	
Meeting result	Summarise results: <ul style="list-style-type: none"> <li>• agreement</li> <li>• explain how participants will receive the meeting summary and how the information could be used by councillors</li> </ul>	
Close	<ul style="list-style-type: none"> <li>• Thank everyone</li> <li>• Check what will be done with any information gathered at the meeting - eg held by participants</li> <li>• If another meeting is needed decide on the details</li> </ul>	

## 2.3 Opening the Meeting

To help break the ice, it's a good idea for facilitators to allow everyone to mix informally over tea and coffee before the meeting begins.

The introduction to the meeting is vital. It's important to build confidence in the process and establish a rapport with parties. Keep it brief and succinct.

Points that are helpful to cover during the introduction:

### The People Involved

#### The facilitator:

- describes who they are, their role and what they would like to be called
- where possible has everyone introduce themselves and give their reason for being at the meeting.
- if councillors are involved, gains agreement on their role in the meeting
- identifies any other parties and their roles, including any additional council officers.

### The Purpose of the Meeting

#### The facilitator:

- acknowledges the atmosphere or general environment in which the meeting is being held
- confirms the meeting's objectives and gets them approved by everyone
- describes what they anticipate the meeting to cover.

### The Meeting's Process

#### The facilitator:

- defines a pre-hearing meeting and the relevant RMA considerations
- gains acceptance of the meeting rules/protocol with particular reference to 'without prejudice'
- describes the meeting steps and gains approval for an agenda
- describes any decision-making methods that will be used or how they will assess how much people approve of, or accept, ideas and decisions
- agrees on whether to record minutes and explains how people can confirm their accuracy after the meeting.

### Meeting Rules

The facilitator must ensure that everyone is clear about the meeting's rules, or it may become unfocused and/or unruly. The key rules could include:

- that the meeting is informal
- that everyone has the right to speak uninterrupted and to discuss the issues
- that an open and frank discussion is encouraged
- that rules of courtesy and respect apply, and that aggressive or abusive behaviour will not be tolerated
- that the meeting is conducted on the basis that everyone does not have to agree
- that no media can attend the meeting.

### 2.4 Identifying the issues

Once the meeting is underway, the applicant outlines their application and answers any questions. The submitters then have the chance to summarise their concerns.

The facilitator should then note on a whiteboard the issues and any common ground that has emerged so far. The issues should be framed neutrally so that everyone can appreciate their relevance and confirm that all have been identified. This stage should be completed as quickly as possible.

This is also a useful starting point for determining how the issues fit with the RMA, and which may be resolvable.

Non-RMA issues should be identified and separated out and an action point noted for the council. Issues the council is unable to resolve should also be listed. For example, the complainant may have a number of options available, such as seeking legal advice.

### 2.5 Discussing issues

From here the facilitator should begin by addressing each RMA issue separately, as far as possible. It is important to provide an opportunity to discuss each issue and establish the needs of each party in relation to that issue. For instance, if the issue is noise, careful questioning may reveal that the applicant needs to make noise during the day, while the submitter only needs peace and quiet from 4pm to 8am. By continually asking questions, the facilitator can learn more about the parties' perceptions of the issue and possible ways to resolve it.

Wherever possible, the facilitator should encourage parties to speak directly to each other. They should avoid becoming drawn into early negotiations before all the options have been identified. Get agreement that everyone understands the issues before going on to identify options.

## 2.6 Generating options

The objective is to generate as many options as possible to address each issue. Brainstorming is often used as a spontaneous, creative process where all ideas are written down without judging or committing to them. Techniques such as discussing in pairs before reporting to the full meeting, and considering what others have done in similar situations, may be of use.

All options for each issue should be listed on the whiteboard. In some cases it may be appropriate for the facilitator to suggest possible options that the parties may be unwilling or unable to suggest.

## 2.7 Evaluating options

The meeting needs to use objective criteria in evaluating options. For example, one important criterion will be how the option fits within the RMA's requirements. The participants are more likely to have their own interests in mind, rather than those of the RMA. The facilitator needs to ensure that any option meets the Act's requirements.

List the options for each issue. Then for each option, list its advantages and disadvantages (further information or advice from experts may be needed for this). Once completed, the options can be ranked, added to, crossed out or combined with the agreement of all parties, and they may then reach a decision. The facilitator should take a less active role during this negotiation and encourage direct communication between parties.

### Good Practice Tip

*Pre-hearing meetings often aim to have resource consent conditions agreed to by all parties. To achieve this, some councils have found it useful to hold more than one meeting, especially if a large number of parties are involved.*

*The first meeting identifies the key issues. The next meeting considers draft resource consent conditions that address these issues. To help refine these conditions, the "one-text" approach could be used. This involves destroying the last draft after each revision. This avoids parties amending different drafts to suit their specific interests. It also prevents their undertaking positional bargaining between old and new drafts.*

## 2.8 Breaking impasses

A common problem of pre-hearing meetings is people arguing from a fixed position and being unwilling to explore other options.

Impasse is often a time when disputants give up trying to reach resolution. However, the tension and energy at this moment can be exploited to keep the process moving. The facilitator's options include:

- reviewing positive progress to date
- acknowledging the impasse
- resisting feeling obliged to resolve the impasse, (this can strengthen the party causing the block)
- focusing on the parties' **needs** to move them from their stated positions
- recognising that people value things in different ways (this provides an opportunity to trade across these differences and add real value to each party)
- finding out the parties' assumptions about the process, and reminding them of their options (such as going to a hearing), and the implications this may have
- trying role reversal, getting each party to summarise the other parties' views
- using "what if . . .", and "sometimes people find it helpful to . . ." to air options or suggestions
- moving into **private session** with each party in turn. This allows time for each party to reflect on their position and options. The facilitator needs to ensure that parties don't think they are taking sides in meeting separately with them. (Private sessions are also difficult to hold when a large number of parties are involved)
- realising when it's time to agree to disagree
- moving to another issue or adjourning the meeting.

### Private Sessions

A private session is where the facilitator decides to meet separately with each of the parties to give them the chance to talk more candidly. If this happens, the facilitator must meet with all parties separately in order to be seen to be fair to everyone.

Private sessions may be needed when:

- **dealing with strong emotions**, and their expression is important but unproductive in front of the other party
- **exploring underlying concerns** that may be sensitive or confidential
- encouraging a party to identify further information that should be shared before agreement is reached

- **exploring options** that parties want to test out in private before discussing them openly
- helping parties to evaluate their best, worst and most likely alternatives to a negotiated agreement
- providing parties time to reflect before they move to the resolution phase.

Below is some guidance on running private sessions:

- **Equal treatment.** Make it clear that all parties will have an equal opportunity to have their say. It may not be appropriate to move to private session if parties lack trust in the process and are not comfortable with the idea.
- Encourage **parties not involved** in the private session to see it as a working session by spending the time considering their options.
- **Confidentiality.** Stress that no information arising from the private session will be conveyed outside it without the agreement of the party.
- **Exploration before solutions.** To explore underlying concerns, ask open-ended questions, such as “Is there anything else that’s important to understand about the problem?”.
- **Authority to disclose.** At the end of the private session, check with if there is anything which is not confidential and may be raised with the other parties.

## 2.9 Summarising the meeting

A summary at the end of the meeting:

- gives the applicant and submitters a 'common memory' of what was discussed, agreed and not agreed
- gives council staff/councillors, the applicant and submitters an overview of:
  - common ground
  - differences
  - information needed by everyone or by specific people
  - the steps to what happens next
    - potential agreements and agreements
    - how the hearing process works (if necessary).

### Summary checklist

• At the end of the meeting ask if anyone has anything further to add.	<input type="checkbox"/>
Summarise the meeting by describing:	
- the steps following a pre-hearing meeting	<input type="checkbox"/>
- how people can access any new information gathered as a result of the pre-hearing meeting and get it before any further meetings	<input type="checkbox"/>
- the areas of agreement/disagreement that have been reached	<input type="checkbox"/>
- what happens to the meeting notes, how they will be circulated, and how everyone will know they are an accurate record	<input type="checkbox"/>
• Arrange another meeting if this is desired; and/or	<input type="checkbox"/>
• By agreement defer the hearing	<input type="checkbox"/>
• Thank all parties for their attendance and close the meeting.	<input type="checkbox"/>

## 2.10 Dealing with difficult behaviour

To keep control of the meeting, the facilitator needs to know how to deal with difficult behaviour and how to ask questions. Here are some useful practical skills for controlling the meeting.

### (a) Preventing participant problems

The facilitator should:

- prepare the room
- define roles and rules for the meeting
- gain group agreement on the meeting's required outcome and process
- separate themselves from the content
- encourage a 'fair outcome' approach
- maintain their role of guiding the meeting
- use the group to enforce the rules and process
- give the group responsibility for its actions and decisions
- ask participants what they need for the meeting to work well.

### (b) Develop ways of dealing with meeting difficulties

Communication actions

The facilitator should:

- practise active listening. Summarise what has been said - check they have understood and summarised accurately
- give encouragement and use positive language
- ask if there is agreement
- bounce questions back
- avoid defensive reactions - model open behaviour
- use body language to convey messages
- say as little as possible
- give feedback on how participants are managing
- accept and legitimise participants' contributions by
  - dealing with them immediately
  - deferring until later in the meeting
  - deflecting comments by choosing not to respond
- involve the group in responding to the difficult behaviour.

### Process actions

The facilitator should:

- regain focus on the issue
- offer an assessment of what is happening
- avoid battles over the process - make changes if there is agreement on this
- remind people about and enforce the process agreements.
- record problems on boards/sheets to put them 'up there' instead of having disputing people clashing with each other directly.
- Ask themselves why a difficult behaviour has happened. Respond to the reasons why, rather than the behaviour.

### (c) Develop questioning methods

The facilitators should ask questions to obtain information, ensure the information is accurate and show interest.

They do not need to have all the answers – they do need to ask the right questions.

<b>Closed Question</b>	For quick, factual clarification usually leading to yes/no answers. Eg, Have you spoken to her yet? <b>Risks:</b> It can exclude messages that the speaker needs to give.
<b>Leading Question</b>	Suggests the desired answer and direction of thought. Eg, Don't you think you should have raised this with the Board by now? <b>Risks:</b> Offers a judgement of the speaker that may reduce their openness and trust.
<b>Probing Question</b>	For follow-up information, to clarify points raised and to obtain more detailed information. Allows the questioner to select the information desired. Eg, What specific information do you need? <b>Risk:</b> Repeated probing may sound like an interrogation.
<b>Challenging Question</b>	Confronts the relevance or accurateness of the information being given. Eg, Can you tell me how this information relates to the purpose of our meeting? <b>Risk:</b> The speaker may feel they are not believed.

**Open-ended question** A general request that allows the speaker freedom to develop an unconditional response. Encourages information giving.

Eg, Would you tell me more about what led you to write this letter?

**Risk:** Information offered may be irrelevant or without direction.

#### (d) Develop questions to guide meetings

Keeping meetings on track does not require foreknowledge of the 'answers'. Asking questions helps ensure that people are talking about the same topic in the same way and at the same time. Asking questions helps us recognise where there are gaps in information and where there is common ground or differences.

Examples of questions:

##### Process Questions

Is there anyone who can't accept these rules?

Is there anyone who needs to see a change to the agenda?

What would it take for you to be convinced that I am managing the meeting fairly?

##### Information Questions

What do you mean by the word ..... *sometimes, water quality, upset conditions?*

This is my understanding of the information - is it your understanding too?

What would make the research credible for you?

How did you come to that conclusion?

##### Agreement Questions

If we do .....then could you accept.....?

Is there anyone who does not agree with .....?

What do you need to add to, or change, in this draft agreement?





## Section 3: Post Meeting



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### Section 3: Post meeting

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The facilitator may need to follow up the meeting with an outline of proposed conditions. They may also require a letter from the applicant agreeing to certain conditions or minor changes in the detail of their application. These may be sent off with the summary of minutes of the meeting (if recorded).

#### Checklist: Post meeting

1. Prepare a record of the meeting..	<input type="checkbox"/>
2. Address action points (eg seek further information)..	<input type="checkbox"/>
<i>If resolved:</i>	
3. Make a summary of the key issues, including an assessment of the issues that have been resolved.	<input type="checkbox"/>
4. Draft planning officer's report.	<input type="checkbox"/>
5. Meet with the applicant to confirm they agree to the proposed conditions.	<input type="checkbox"/>
6. Ask the applicant to sign a statement to this effect.	<input type="checkbox"/>
7. Contact the submitter to confirm they agree to the proposed conditions.	<input type="checkbox"/>
8. Ask the submitter to sign a statement to this effect. A 'withdrawal of submission' form could be included.	<input type="checkbox"/>
9. Complete report.	<input type="checkbox"/>
10. Obtain approval (note that consent to a notified non-complying consent may not be granted under delegated authority).	<input type="checkbox"/>
<i>If not resolved:</i>	
3. Obtain and circulate further information if required.	<input type="checkbox"/>
4. Organise another pre-hearing meeting;	<input type="checkbox"/>
OR	
Organise a formal hearing.	<input type="checkbox"/>

### **Assessing The Meeting's Success**

It's a useful practice to assess the value of the pre-hearing meeting and whether it 'worked'. Indicators of success could include:

1. Understanding the environmental, technical, social, cultural, planning and economic information.
2. Agreement on further information needed.
3. Identification of issues.
4. Agreement on issues.
5. Finding common ground and differences.
6. Evaluation of a range of options.
7. Agreement on an application.
8. Development of working relationships for the consent process.
9. Confirming where disagreement remains.



## Appendices



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## Appendix 1: Sources of further information

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### Selected Bibliography

- Acland, A.F., *A Sudden Outbreak of Common Sense*, Hutchinson Business Books, London, 1990.
- Brown and Marriott, *ADR: Principles and Practice*, Sweet and Maxwell, 1993.
- Fisher, R., Ury, W. and Patton, B., *Getting to Yes*, 2<sup>nd</sup> Edition, Random Century, London 1991.
- Goldberg, S.B., Sabder, F.E.A., and Rogers, *Dispute Resolution*, 2<sup>nd</sup> Edition, Little Brown & Co., Boston, 1992.
- Ury, W., *Getting Past No*, Random Century, London 1991.

### Selected Training Providers

- LEADR New Zealand Inc.  
PO Box 4329  
Shortland Street  
Auckland  
Ph: 09-373 5020  
Fax: 09-373 5087

LEADR provides annual training courses on mediation. These are suitable for pre-hearing meeting facilitators. Environment Court Commissioners attend these courses.

- Gay Pavelka  
Gebbies Valley  
RD 2  
Christchurch  
Ph: 03-329 7847  
Fax: 03-329 7947

Gay Pavelka has provided training courses for pre-hearing meeting facilitators in councils.

- Diploma in Business Studies (Dispute Resolution)  
Massey University  
Private Bag 11 222  
Palmerston North

This is the only NZ course recognised by the Arbitrators and Mediators Institute of NZ.

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## Appendix 2: Information for councils to provide to applicants and submitters

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### Pre-Hearing meetings and hearings: Notes for applicants

*A pre-hearing meeting is an informal meeting held before the hearing with a purpose of clarifying mediating or resolving any issues raised.*

#### Why hold a pre-hearing meeting?

A pre-hearing meeting aims to produce an ‘all gain’ situation - even when no agreement is reached.

The costs of holding a formal hearing can be considerable, especially if some issues or concerns are unclear. Using a pre-hearing meeting to clarify or resolve these matters can considerably reduce these costs and may even eliminate the need for a hearing at all. They can also reduce the risk of future costs by producing sustainable solutions agreed to by all parties.

#### When and where will it be held?

A pre-hearing meeting can be held at any time before the hearing, although it is most commonly held between the close of submissions and the hearing. As an applicant you may request, or be asked by the council, to attend. Pre-hearing meetings may be held at the relevant site, as locally as possible or at the council offices.

#### Who attends?

A pre-hearing meeting draws together all parties - except in most cases the decision-maker - and is likely to include the applicant, submitters and council staff and advisers. It is facilitated by an independent person who will not usually be involved in processing the application.

#### How should I prepare?

Being well prepared for the meeting is really important. You should ensure that you have considered the matters raised in any submissions and established where you are and are not willing to compromise before you go into the pre-hearing meeting.

You may wish to involve specialist advisers (eg traffic engineers) for their expert opinions. Alternatively, it may be more appropriate to talk to your advisers first and handle the meeting without them. This is because the most important thing about a pre-hearing meeting is its informality. Before you make a decision on who attends you may like to talk to people at the council.

### Before the meeting, you should:

1. **Ensure you have had the process fully explained to you, and that you understand what is going on.**
2. **Ensure you have a copy of all of the submissions.** Make yourself familiar with the concerns raised and, if relevant, the submitters' properties (this will make it easier for you to understand how they think they may be affected by the development).
3. **Examine the concerns raised and consider ways of addressing them.**  
Ask yourself the following questions:
  - Can these be met by changing the application or by accepting some conditions (ie, can you achieve the same result but consider a different way of getting there?)?
  - Why do you want a particular result for this application. (ie, what are your needs?)?
  - Are there some changes you would not consider (ie, when would you not be prepared to move?)?
  - Do the concerns raise technical issues which you need to work through with your advisers?
1. **You may wish to contact the submitters** directly before the pre-hearing meeting to discuss any issues. If you do this you may be able to obtain additional information in time for the meeting that will satisfy their concerns.
2. **Discuss any concerns raised with people you know.** They may be able to recommend some other ways of addressing the concerns.

### During the meeting, you should:

1. **Be positive and prepared to enter into discussions that identify alternatives, compromises and changes.** While you do not have to agree to any of these, discussing them will help everyone get a better idea of where all parties are 'coming from'. You may also find that people come up with satisfactory solutions that you had not previously considered.
2. **Know what your needs are and where you can be flexible.**
3. **Take full size copies of the plans, and a couple of spare copies of the proposal.**
4. **If taking your advisers, ensure they are well briefed about the purpose of the meeting.** Let them know that the meeting aims to resolve issues, not create confrontation and that, as a result, it is one of reasoning and listening.

### After the meeting, you:

1. **May be asked to make changes to the application or to agree to conditions before it goes to hearing.** If this is the case, once you have agreed to the changes or conditions, the submitters may also be asked to sign their agreement. This may even eliminate the need for a hearing - or it may reduce the number of matters needing to be contested. You should ensure that any changes or conditions are as agreed before you sign them, and you may wish to discuss them first with your advisers.
2. **May be asked to agree not to discuss at the hearing matters you have agreed to.** This reduces the amount of time spent on matters that all parties now accept.
3. **May be asked to provide further information on a matter or matters at the hearing.**

### Pre-Hearing meetings: Notes for submitters

*A pre-hearing meeting is an informal meeting held before the hearing with a purpose of clarifying, mediating or resolving any issues raised.*

#### Why come to a pre-hearing meeting?

A pre-hearing meeting aims to produce an 'all gain' situation - even when no agreement is reached. It has a number of benefits, including:

- helping all parties to understand the application, the concerns it has raised, and the planning process
- providing an informal opportunity to share your concerns and discuss outcomes (this cannot happen in the formal hearing process)
- removing the need to attend the hearing if matters are resolved. If the meeting reaches a favourable decision, you may also find that everyone accepts the result and there are no further appeals. In this case, the applicant may be asked to change the application, or the staff may draft conditions to attach to the consent which resolve your concerns. On this basis, you may decide you no longer wish to pursue your submission.

#### When and where will it be held?

A pre-hearing meeting can be held at any time before the hearing, although it is most commonly held between the close of submissions and the hearing. As a submitter you may request, or be asked by the council to attend, a pre-hearing meeting. It may be held at the relevant site, as locally as possible or at the council offices.

### Who attends?

A pre-hearing meeting draws together all parties - except in most cases the decision maker – and is likely to include the applicant, submitters, and council staff and advisers. The meeting is facilitated by an unbiased person, usually a council staff member who will not be involved in processing the application.

### Before the meeting, you should:

1. **Ensure you understand what issues are relevant under the RMA, the pre-hearing process and the later hearing and appeal processes.** Discuss this with someone at the council if you need to.
2. **Establish whether there are any gaps in the information you have, or whether you need more information to understand the application better.** If you need more information, contact either the council or the applicant.
3. **Establish, on the information available to you, the reasons why you want a particular result to this application.** What are your needs?
  - **Ensure you are clear about your concerns.** How might this application affect you? You will need to express these concerns at the meeting. You should prepare yourself for this.

### During the meeting, you should:

1. **Be positive and prepared to discuss a number of alternatives, compromises and changes.** While you do not have to agree to any of these, discussing them will help everyone get a better idea of where all parties are 'coming from'. You may find that people suggest satisfactory solutions that you had not previously considered.
2. **Try not to be pressured.** Ask yourself, is the agreement worth making? If it's not, then don't agree to anything. Remember, you have the right to seek advice privately on any agreement you are considering before making any commitment. As a general rule, you should not be asked to sign any agreement at the meeting. However, if this happens, the agreement should be properly drafted and, if you are asked to agree to it, you should be able to reassess it in private before providing final agreement.
3. **Be clear about any solutions reached.** Ask for clarification if you are not sure.

### After the meeting:

If you are satisfied with the result of the meeting, you may choose to withdraw your submission. If you do this, you decline the right to speak at the hearing, and have no right of appeal of the council's decision. So you need to be sure that your concerns have been addressed by any changes to the application, or

by any conditions council staff recommend placing on the consent. Before you take this option, you should discuss the matter with staff at the council and ensure that the conditions you have sighted and agreed to will be endorsed by the decision-makers.

If you are not satisfied with the result of the meeting, you can withdraw your request to be heard at the hearing. This may remove the need for a formal hearing, but the submission remains valid and must be considered by the council when it makes a decision on the application. You also retain the right to appeal the decision.

In deciding whether you want to be heard at a hearing, you need to be aware of how the hearing process operates. A hearing can be relatively formal. All those involved state their case to a group of decision-makers who then make a decision. There is usually no ability to ask questions at these hearings or to discuss each other's evidence. Generally no new issues beyond the submission may be raised.

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## **Acknowledgements**

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