

# Appearing at a hearing about a proposed plan or resource consent

## 3.3



## 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. If you are uncertain about issues raised in this guide then direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

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# Introduction

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The Resource Management Act 1991 (usually called the RMA) is the main piece of legislation that sets out how we should manage our environment. It's based on the idea of the sustainable management of our resources, and it encourages us (as communities and as individuals) to plan for the future of our environment.

The RMA means that councils set rules and requirements to manage activities ranging from building houses, clearing vegetation, moving earth, or taking water from a stream. The purpose is to ensure activities won't harm our neighbours or communities, or damage the air, water, soil and ecosystems that we and future generations need to survive.

## The role of councils

Making decisions under the RMA is usually the responsibility of regional and district/city councils. They do this through regional policy statements, plans and resource consents.

## About this guide

This guide is the tenth in a series of 13 guides called An Everyday Guide to the RMA (see more details about the series below).

Under the RMA, you can write a [submission](#) about a proposed council plan or [resource consent](#). Your submission may influence the final decision.

Sometimes, a council may hold a [hearing](#) to help it make a decision.

This guide is for submitters 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.

The guide has a glossary of RMA terms at the end. Words defined in the glossary are coloured [light blue](#).

## What this guide doesn't cover

The principles for a hearing set out here are also relevant for hearings by [boards of inquiry](#) or the [Environment Court](#). However, there are some important differences that you should understand before attending their hearings, such as cross-examination, and deciding who should speak in support of your submission at the hearing.

### MORE INFORMATION

- [You and the Environment Court](#)

## About the everyday guides

These guides are intended to help people work with their councils. If you're dealing with the Environmental Protection Authority (EPA), a board of inquiry, or the Environment Court (see the glossary to learn more about these), you might need more technical advice from the EPA ([www.epa.govt.nz](http://www.epa.govt.nz)) or the Environment Court ([environmentcourt.govt.nz](http://environmentcourt.govt.nz)).

For more information about specific parts of the RMA process, see the [full set of guides](#) on our website.

### MORE INFORMATION

- [Understanding the RMA and how to get involved](#)
- [Getting involved in council plans](#)
- [Making a submission about a proposed plan or resource consent](#)

# What is the purpose of a hearing?

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A hearing is an opportunity for people who have made submissions on a proposal to speak to a panel about their submission, and to present supporting evidence.

There are two RMA processes where hearings can be held.

- Hearings on submissions on a council's proposed policy statements, plans, [plan changes](#), or variations.
- Hearings on a resource consent application or [notice of requirement](#) for development proposals.

## Council hearings

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. They are designed for you to have your say, and to let other people have theirs. They're a key way for the community to be involved in council decisions about the environment.

Councils must decide on an appropriate procedure for the hearing that avoids unnecessary formality and addresses specific needs such as recognising tikanga Māori, receiving evidence in Māori, and providing for the use of New Zealand Sign Language. Councils must also consider the physical site for the hearing, its accessibility, and any support required for people with disabilities.

Hearings are usually held in a physical location (often in council chambers), but can also be held virtually over the internet or by phone if these facilities are available. Virtual hearings can have significant time and cost savings for all involved (for example, by removing the cost and time needed to travel to a hearing venue). The council may contact you about this before a hearing is scheduled. You should contact the council if you wish to be heard through audio or audio visual link.

# Hearings on proposals of national significance

Some proposals are heard and decided by a [board of inquiry](#) or the Environment Court, because the Minister for the Environment considers them to be nationally significant.

## Direct referrals to the Environment Court

In some cases an application for resource consent or a notice of requirement can be directly heard by the Environment Court, without a council hearing. This [direct referral](#) streamlines decision-making for large-scale or complex applications that are likely to end up in the Environment Court on [appeal](#) after the council hearing and decision. This process aims to save time and costs for [applicants](#) and submitters.

### MORE INFORMATION

- [Applying for resource consent](#)
- [Understanding national direction](#)
- [You and the Environment Court](#)



# Plans

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Regional and district councils (including city) and unitary authorities develop [district plans](#), [regional plans](#), and [regional policy statements](#). These set out how they will sustainably manage resources, and reduce or manage effects on the environment. The plans contain rules that control what people can do in the environment.

Regional policy statements focus on providing an overview of the resource management issues in the region and how to achieve integrated management.

Regional plans focus on particular parts of the environment, such as the coast, land, a river or the air.

District plans focus on how to manage subdivision, land use, and development in the district.

## Notifying the public about a proposal

A council must [publicly notify](#) a proposal for a new plan. A variation to a proposed plan and a change to an existing plan are likely to be publicly notified. However, a council has the ability to limited notify a variation to a proposed plan or a change to an existing plan if it can identify all the persons directly affected.

### **Public notification: An opportunity to get involved**

Publicly notifying a proposal means the council advertises it on its website and in the local paper, and calls for submissions. The council may also directly contact people who might be affected.

The purpose is to let people know what the council proposes to do, where they can view the proposal, and invite them to make written comments (submissions).

### MORE INFORMATION

- [Getting involved in council plans](#)

# Resource consents

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Some activities can be done as of right, but others need permission. This may be granted through a [resource consent](#). Every day, people apply to their local council for resource consents to do things such as putting up a garage, subdividing their property, building a multi-storey apartment block, or taking water from a stream.

A consent often has conditions about how to carry out the activity, to avoid or reduce any adverse effects on the environment.

## MORE INFORMATION

- [Applying for a resource consent](#)
- [Information for affected persons](#)

## Notifying the public about a consent

- **Non-notified.** The council may decide that there is no need for the general public to make submissions as the adverse effects from the proposed activity are ‘minor’ or ‘less than minor’.
- **Publicly notified.** The council may decide that a proposal will or is likely to have an effect on the environment that is “more than minor”, or that there are special circumstances. The council advertises it online, including a summary in the paper, where to view the application, and calls for submissions.
- **Limited notification.** The council notifies only those people it considers might be affected by a proposal (known as [affected persons](#)).

## MORE INFORMATION

- [Making a submission about a proposed plan or resource consent](#)
- [Applying for a resource consent](#)

# Making a submission

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Anyone who wishes to express their views about a publicly notified proposal or resource consent can make a written comment (a [submission](#)) to the council about it.

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

Attending the hearing gives you a chance to speak about the important parts of your submission, and give more information. It also gives the hearing panel the opportunity to ask you questions.

You will be limited to the matters raised in your submission, and will not be able to raise new issues unless these are raised at the hearing.

## Council report on submissions

When the council has received all the submissions, council officers prepare a report that includes:

- a summary and analysis of the submissions and [further submissions](#) (if any)
- recommendations on which parts of the proposal/application to adopt, remove or modify.

They send the report to the consent applicant and everyone who made submissions.

### More information

- [Making a submission about a proposed plan or resource consent](#)

## Notification about a hearing

If you and other submitters stated that you would like to speak at a hearing, the council will hold one. They will tell you the date and time of the hearing at least 10 working days beforehand.

# Before the hearing: providing evidence

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

You may decide to engage an expert, for example in planning, traffic or water, to prepare evidence for you.

If you intend to call expert evidence, the council may require you to provide this at least 5 working days before the hearing. In these situations, the council will usually make this evidence available for other parties to read.

Providing evidence before the hearing is useful, especially if the proposal is a complex resource consent, or if the experts disagree.

The table shows the deadlines for sending out evidence before a hearing.

**Table 1: Pre-circulating evidence for a hearing**

Information	Sent to	Deadline before hearing
Council’s report	Applicant Any submitters	15 working days
Applicant’s evidence (resource consent)	Council	10 working days
Submitters’ expert evidence	Council Applicant	5 working days

# The hearing panel

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A hearing panel is made up of councillors and/or independent commissioners. Their role is to listen to submitters' arguments for and against a proposal. They may make a final decision on a proposal (if the council has given them that authority). However, final decisions on a full plan or a freshwater planning instrument cannot be delegated and must be made by councils.

If you have concerns about who will hear a proposal, discuss this with council staff. The council may decide to change the panel members or a commissioner if there is a strong reason that this should happen.

## Resource consents

For consents, the applicant or submitters can ask the council to appoint an independent commissioner – or a panel of independent commissioners – to hear and decide on the application. If a submitter requests this, they must meet the costs, but if the applicant makes the same request, they meet the costs.

## Policy statements, plans or plan changes that follow the streamlined planning process

In these cases, the panel may be made up of councillors and/or commissioners.

## Freshwater planning proposals

In these cases, the Chief Freshwater Commissioner has been appointed by the Minister for the Environment to convene freshwater hearing panels.

These panels are usually made up of:

- two local representatives (or commissioners nominated by the council)
- one member with an understanding of tikanga Māori and mātauranga Māori (selected from members nominated by tangata whenua)
- two members from a pool of freshwater commissioners appointed by the Minister for the Environment.

# What you'll do at the hearing

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When it's your turn to present to the hearing panel, you'll most likely have the chance to read out a written statement, and to present evidence that supports your submission. The panel might ask you about your submission, your statement, or your evidence.

If the proposal is going through a [freshwater planning process](#) or [streamlined planning process](#), the hearing panel may allow other parties or their representatives (such as lawyers) to question you or your expert witnesses. Equally, the hearing panel may give you the opportunity to question other parties. This is referred to as [cross-examination](#). Cross-examination is not allowed in resource consent hearings.

After everyone has had a chance to speak, the panel makes its decision. This is usually done in private and released sometime after the hearing.

## Making a statement

It will be useful to prepare a statement to read at the hearing. The hearing panel will have already read your submission. This is your opportunity to expand on the points in your submission, or to explain the evidence you've provided. It's a way to 'warm up' before the panel asks you questions. If you want, someone else can read out your statement for you.

You need to consider how to present any evidence you have gathered and pre-circulated.

Your statement might include examples of the points in your submission, or you could comment on the recommendations in the council officer's report or on points raised in other submissions.

You can also just read straight from your submission if you wish. If so, the hearing panel may tell you they take your submission as read, and ask you directly about the matters you've raised.

If you choose to prepare a statement, plan it carefully, and practise reading it. The hearing is your chance to talk about the issues in your submission.

Any information you provide during the hearing will also be on the public record. Hearings may be recorded or audio-visual technology used, in which the council will make it clear to the persons appearing at the

hearings. We have published a guide to support councils to run effective virtual hearings. See a [Practical guide to virtual hearings under the RMA](#) on our website.

## Who else will be at the hearing?

A council officer is usually at the hearing to present the council's report. Other council officers, such as urban designers or traffic engineers, might be there to give technical advice.

There may be another person to help the panel with administration of the hearing (usually a council officer).

Sometimes the council or hearing panel might have appointed a person to help submitters through the process – known as a 'friend of the submitter'. This person is neutral in terms of the proposal itself, and is not there to influence or support the content of your submission. However, they are there to help you participate in the process and understand what is going on.

For a resource consent or a [private plan change](#), the applicant will attend. They may have an advocate or a lawyer, and other experts.

Other submitters will probably attend. They may have an advocate, a lawyer or an expert witness.

A hearing is usually open to all, so there may be other members of the public and media representatives. Unless people have made a submission and have asked to be heard, they will not be invited to speak.



# Getting ready

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When you've received the council notice about the hearing, start preparing and practising your statement, and gathering your evidence. Nothing beats preparation for getting your point across on the day.

- Prepare your written statement to read out at the hearing. Decide on the key points you want the panel to hear and include them in your statement. Providing examples of what you are talking about, or photos of the area of concern is often useful to the panel. They may ask for copies of your written statement.
- If you want to use PowerPoint or other software, tell the council before the hearing so they can arrange this.
- Practise your presentation, or reading your statement. You want to get it right and to look confident and comfortable.
- Think about what questions the panel might ask you, and how you can answer them.
- You can present in te reo Māori, but should give reasonable notice beforehand if you wish to do so.

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

## Council report

At least 15 working days before the hearing, you'll get a copy of the council officer's report about the proposal. This may discuss your submission points. It will make a recommendation on whether these points should be accepted, accepted in part, or rejected.

Read the report before the hearing. See if there is anything you want to talk about in your statement, and change your statement if necessary.

## Pre-hearing meetings

You might also be invited to a [pre-hearing meeting](#). Others who may attend include other submitters, the applicant (for a resource consent or a private plan change), and the council officer who reported on the proposal.

You don't have to attend, but it can be an informal way to sort out issues before a hearing. You cannot quote matters people have raised at this meeting, unless they raise it when speaking to the hearing panel.

Everyone at the hearing will get a copy of a report on the pre-hearing meeting, including the agreed issues and those that are outstanding. The hearing panel must consider this report in making their decisions.

# How to do well on the day

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You want to make a strong presentation. You want the hearing panel to fully understand and focus on your statement and your evidence. Keep your statement simple and be yourself.

You can expect the 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 or talk to your submission 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 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.
- Keep calm and polite.

This will keep you in the right frame of mind for any questions from the panel.

## Presenting your evidence

If you are presenting evidence, make it as clear and as simple as possible. Give the panel a copy of your data or reports, but focus on the conclusions you have reached or the matters you want them to be aware of.

The hearing panel can take reports or evidence as read (allowing more time for submitters and witnesses to expand on, or clarify, the points raised, and answer any questions the panel might have).

Expert witnesses will generally detail their qualifications or background.

## The hearing is neutral

Councillors on a hearing panel aren't there as politicians. They are decision-makers who have to weigh up both sides of an argument, and they have been trained in decision-making.

- 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.

## Using an advocate or a lawyer

- You may engage an advocate (a spokesperson) if you're nervous about speaking to the panel, or if you are part of a group that has made a submission and want one person to speak for you all. The advocate could be a member of your group.
- You may use a lawyer as your advocate if your submission explores legal matters, or if you need a professional interpretation of legislation or case law. However, you will need to cover any legal fees you might incur.

## Using expert witnesses

The chairs of hearing panels and all members are accredited by completing the [Making Good Decisions programme](#). However, they aren't necessarily experts. They'll want to hear solid evidence to help them make a decision.

In a hearing about a private plan change or a resource consent application, the applicant might use expert witnesses to support their case. It might make sense for you to use expert witnesses as well. Remember:

- Stick with what you know. Only expert witnesses can offer opinions on matters that relate to their field of expertise. If you are not an expert witness, don't pretend to be one or the material you present may be struck out.
- You could use expert witnesses (such as planning consultants, surveyors, engineers or scientists) to present evidence about technical topics (for example, traffic, heritage, soil stability or microbiology).
- Make sure any expert witness you use can present evidence that supports your point of view.
- Expert witnesses are not 'hired guns'. They must be able to support their own conclusions. They can only give their expert opinion based on the facts. If possible, it is best to avoid using people you have a personal relationship with as expert witnesses, to help the panel be confident that their evidence is independent.

- Check the costs, and whether you can share these with other submitters. You can get a list of the other submitters from the council.

## Speaking with other submitters

If the hearing involves many submitters and covers a lot of topics (for example, a whole plan review), you may make your submission along with other submitters speaking about the same topic.

# Rights and rules

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

## Can I bring support people?

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

## Will the hearing recognise tikanga and te reo Māori?

Councils must allow for submissions and evidence to be given in te reo Māori. You should give reasonable notice if you intend to do so (for example, by noting this in your written submission), so the council can arrange for an interpreter if needed.

Also ask in your written submission about dealing with Māori protocol or other cultural issues – councils must recognise tikanga Māori where appropriate.

Councils will try to accommodate most reasonable requests.

## Can I ask questions?

If you don't understand what's going on at the hearing, you can ask questions, but only about procedure. You should address these questions to the chairperson of the hearing panel. Only panel members can ask questions about submissions or evidence.

You are usually not allowed to ask any questions of the council officer, the submitters, the witnesses, or an advocate or lawyer (other than in the limited types of hearings where cross-examination may be allowed – see below). You can suggest questions for the panel, but the panel doesn't have to ask them. Raise any questions you would like them to ask with the chairperson, when you are speaking about your submission.

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

- stick to the issues that concern you and 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 commissioners, submitters, and the purpose of the hearing
- don't grandstand, or get into a debate.

## What if I disagree with what someone else says?

You can only speak directly to the panel, when you are presenting your submission or answering a question. You must never interrupt someone speaking, even if you disagree with what they are saying.

## Will I be cross-examined?

**Cross-examination** means being asked questions by someone other than the panel – usually lawyers representing other submitters, the council, the applicant, or their representatives and experts.

Cross-examination may be allowed in the freshwater and streamlined planning processes. In these cases you or your representative may have the opportunity to question other parties, and they may be able to question you or expert witnesses. You can check beforehand with the panel or the council whether there can be cross-examination.

## What will it cost me?

You have to pay your own costs, such as travel to and from the hearing (if the hearing is held at a physical location), time off work (noting some hearing sessions can be held outside of regular business hours), and any professional fees. You don't have to pay for anything else.

If you asked for an **independent commissioner** (rather than councillors) to decide on a resource consent, you may have to pay for this if the applicant has not made the same request. The council can give you an estimate of these charges, which will be shared equally among any other submitters who made the same request. You must pay the charges regardless of the decision on the proposal itself.

# Appealing the decision

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Get professional advice if you're thinking about appealing the decision. A lawyer, planning consultant, or someone with similar expertise can tell you if you are likely to be successful, and the risks of taking an appeal. Seeking advice early can save you time and 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”. Otherwise, there can be pointless costs and delays for everyone.

## MORE INFORMATION

- [You and the Environment Court](#)
- [The Environment Court: Awarding and securing costs](#)



# Glossary

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The purpose of this glossary is to help you understand the meaning of terms used in this guide. Some of these terms have specific legislative definitions in section 2 of the RMA.

<b>Affected person</b>	Is someone identified by the consent authority (usually the council) as likely to experience adverse effects of a proposal which are at least minor.
<b>Appeal</b>	Request for a decision to be changed, predominately to the Environment Court.
<b>Applicant</b>	The person applying for a resource consent, change to existing consent conditions, or a private plan change.
<b>Board of inquiry</b>	A special board appointed by the Minister(s) to hear and decide proposals of national significance.
<b>Commissioner</b>	A person appointed by a council to carry out statutory decision-making duties on the council's behalf, or to serve as an independent adviser to the council in the making of those statutory decisions.
<b>Cross-examination</b>	Where submitters or applicants (including their lawyers) are allowed to question other parties in a hearing. This is not usually allowed in first-instance hearings under the RMA, but may be allowed in some hearings (for example, the freshwater planning process and Environment Court hearings).
<b>Direct referral</b>	A process where, at the request of the applicant, the council decides that the Environment Court will determine the application.
<b>District plan</b>	A plan prepared by city or district councils to help them carry out their functions under the RMA.
<b>Environment Court</b>	A specialist court where people can appeal decisions made by councils on a policy statement or plan, or on a resource consent application; or where they can apply for an enforcement order.
<b>Freshwater planning process</b>	A specific plan-making process that councils must use for proposed regional policy statements and regional plans (including plan changes) which relate to freshwater.

<b>Further submission</b>	An opportunity for certain people to comment on other people’s original submissions on a proposed plan or variation, by supporting or opposing these.
<b>Hearing</b>	Gives people who have already written submissions the chance to speak to the decision-maker, about what a council or an applicant is proposing.
<b>Independent commissioner</b>	A person appointed to carry out duties who are not a member of the council (appointed from outside the elected members or staff of a council).
<b>Limited notification</b>	A council only notifies people who are affected by a resource consent application or plan change, and only those people can make a submission.
<b>Making Good Decisions programme</b>	A programme to accredit commissioners to conduct hearings and make decisions, on behalf of councils, administered by the Ministry for the Environment.
<b>Mātauranga Māori</b>	The body of knowledge originating from Māori ancestors, including the Māori world view and perspectives, Māori creativity and cultural practices.
<b>Non-notified application</b>	A resource consent application which a council decides does not require submissions (see publicly notified and limited notification).
<b>Notice of requirement</b>	A proposal for a designation, which may be notified or non-notified.
<b>Plan change</b>	The process that councils use to prepare changes to an operative plan.
<b>Private plan change</b>	When a person, group or organisation requests a change to any provision in a regional or district plan once the related provision has been operative (legally part of the plan).
<b>Pre-hearing meeting</b>	An informal meeting to sort out issues before a hearing.
<b>Publicly notified</b>	Means that any person can make a submission on the consent application before the closure date.
<b>Regional council</b>	Primarily manage resources like the air, water, soils and the coastal marine area.
<b>Regional plan</b>	Can be prepared by regional councils, to help them manage the resources they are responsible for.

<b>Regional policy statement</b>	Must be prepared by all regional councils. They help set the direction for managing all resources across the region.
<b>Resource consent</b>	Permission from the local council for an activity that might affect the environment, and that isn't allowed 'as of right' under the district or regional plan.
<b>Streamlined planning process</b>	An alternative option to the standard planning process for a council to prepare an RMA plan or plan change. The proposed RMA plan or plan change must meet certain criteria, and must be directed by the Minister for the Environment (or the Minister of Conservation in the case of a regional costal plan).
<b>Submission</b>	Comments, opinions, concerns, support or opposition about a proposed development, a designation, or a proposed policy statement or plan.
<b>Tangata whenua</b>	In relation to a particular area, means the iwi, or hapū, that holds mana whenua over that area.
<b>Tikanga Māori</b>	Māori customary values and practices.
<b>Working day</b>	Any day except for a weekend day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day, and those days between (and including) 20 December and 10 January. Note: If Waitangi Day or Anzac Day falls on a weekend day, the following Monday is excluded.