



Ministry for the
Environment
Manatū Mo Te Taiao

AN EVERYDAY GUIDE TO THE RMA → SERIES 2.2

Consultation for Resource Consent Applicants



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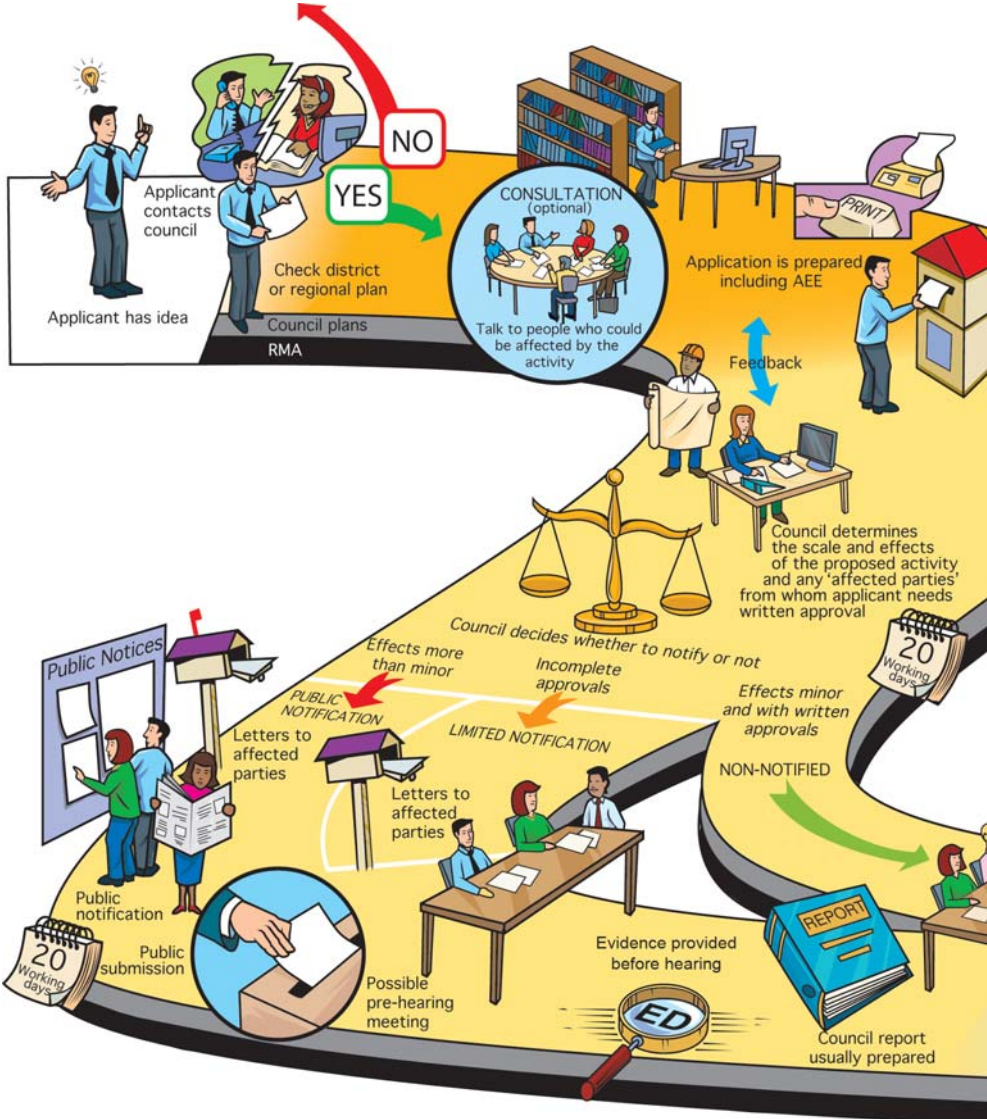
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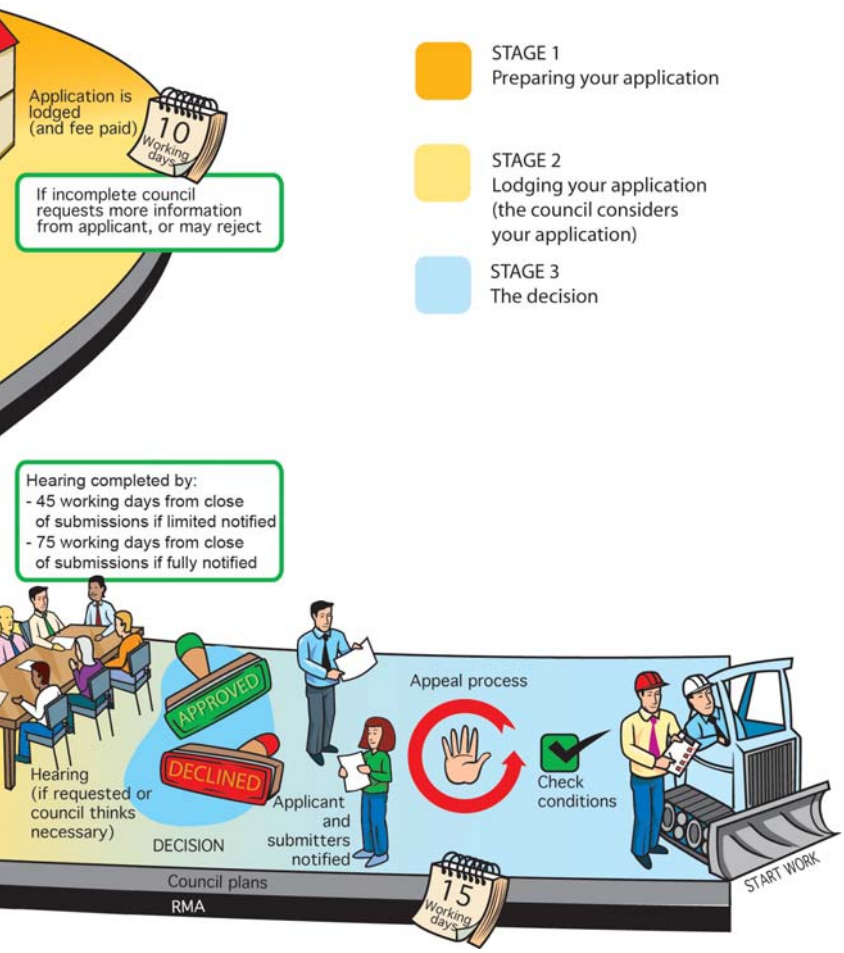
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APPLYING FOR A RESOURCE CONSENT



CONSULTATION FOR RESOURCE CONSENT APPLICANTS

This diagram represents the council process. Some applications may be referred to the Environment Court or a board of inquiry for a decision, instead of the local council. See 'An Everyday Guide to the RMA' booklet 1.4 *National Level Guidance and Processes* for more information.



Introduction

Thinking about applying for a resource consent? If so, you may need to undertake some form of consultation.

Consultation is seen by some as confusing and difficult. This guide will help you through the process and will show you how consultation can lead to a better result for your project.

This guide starts with a brief overview of the resource consent process and the role of the council. It then explains the foundations and principles of consultation under the Resource Management Act 1991 (RMA).

The big questions of who to consult with and how are answered. This guide also provides details of what is expected of you as the applicant and what you can expect in return. Explanatory comments, tips and suggestions are provided throughout the guide.

You should find this guide useful if you're new to the RMA, to the consent process, or to consultation.

Consent process

To understand the context within which consultation takes place, it's important to know about the process involved in applying for a resource consent. That process is outlined below: a more detailed description is provided in 'An Everyday Guide to the RMA' booklet *2.1 Applying for a Resource Consent*.

Consent authorities (councils)

The resource consent process is usually managed by councils. In this role they are called 'consent authorities'. There are three types of councils:

- » territorial authorities (city or district councils)
- » regional authorities (commonly known as regional councils)
- » unitary authorities (combined regional and territorial authorities).

While their roles and responsibilities are set out in the RMA, councils are able to provide guidance on consultation at any stage during the consent process. For more general information on the RMA see 'An Everyday Guide to the RMA' booklet *1.1 Getting in on the Act*.



Some resource consent applications are decided by a board of inquiry or the Environment Court instead of the local council. These applications include those directly referred to the Environment Court, or proposals of national significance that have been referred to the Environment Court or board of inquiry by the Minister for the Environment (these are said to have been ‘called-in’).

This RMA guide is intended for applicants who will normally apply to the local council for consent. To find out more about the process for nationally significant applications, refer to ‘An Everyday Guide to the RMA’ booklet *1.4 National Level Guidance and Processes*.

Consent process stages

The way your consent application proceeds depends on the scale and significance of the effects of your proposal, whether you’ve obtained written approval from all the people the council considers will be adversely affected, and the type of consent being applied for. For more information see ‘An Everyday Guide to the RMA’ booklet *2.1 Applying for a Resource Consent*.

Officially, the ‘consent process’ starts when you lodge an application with a council. But by that stage, you are likely to have a pretty clear view about what you’re wanting consents for. The best time to engage in consultation is **before** the consent process formally begins. This is during the first stage described below. The second and third stages take place once you’ve lodged your application with the council. Consultation can play a part in all three stages.

First stage – preparing your application

This is the period leading up to the lodgement of your application with the council and includes all the information gathering you will do.

1. You start with an idea or project.
2. You may consult with others (the rest of this guide explains how you do this).
3. You develop your proposal.
4. You prepare and lodge your application.

During this stage you should discuss your proposal with the council and others potentially affected by your proposal. It's best to have these discussions while you're still developing your proposal, and before you lodge your application with the council. Discussions with the council will help you identify what types of consent are required (if any), what environmental issues might need to be addressed, and what information is required to support your consent application. You might consider getting advice from relevant resource management professionals at this stage such as planners, engineers, landscape architects and archaeologists, if the scale and significance of your proposal warrants it.

It's important to bear in mind that consultation may not be just a pre-application exercise – it can help throughout the consent process, and form the basis for long-term relationships with your neighbours and the community.

While the RMA does not require applicants to consult with anyone, it's a good idea to consult those who you and/or the council think could be affected by your proposal. In some cases, the council may indicate who may potentially be adversely affected. The final decision on who is adversely affected, however, won't be made until after the application is lodged. If you ask the council early on, you may be able to include any written approvals that you get from potentially affected persons at the time you lodge your application. This can save time, and may mean your application can be processed on a non-notified basis.

Remember to be upfront about your intentions when making contact with any potentially affected person about your application for resource consent.

Second stage – the council considers your application

After you lodge your application for resource consent with the council, it will be checked to see that the information you've supplied is adequate. The council decides whether to notify your application or not; if it's notified, people are able to make submissions.

Throughout the notification process, if there is widespread opposition or interest in your application that makes it likely that the council's decision will be appealed, you may wish to request that your application is directly referred to the Environment Court for a decision. You can request this up to five working



days after submissions close. But talk to the council processing your application first. The council must grant a request for direct referral for your application if the value of the investment in the proposal meets or exceeds a threshold amount set by regulations, unless exceptional circumstances exist. If exceptional circumstances exist, the council may make the decision on whether the application should be directly referred to the Environment Court.

Third stage – the council makes a decision on your application

After considering and reporting on your consent application (which may involve a hearing), the council decides whether to approve or decline it. Their decision can be appealed. If you request direct referral of your application to the Environment Court and the council agrees or the investment threshold is met and there are no exceptional circumstances, the Environment Court will make a decision on your application. These decisions can be appealed to the High Court, but only on points of law.

What is consultation?

In the context of seeking a resource consent, consultation is the process of communicating with people or groups who may be interested in or affected by your proposal. Early consultation can help avoid or ease opposition to your proposal later in the process. This section sets out the principles of consultation.

Why consult?

Public participation is one of the key principles underlying the RMA. We are affected every day by the actions and activities of our neighbours, and by those that use the same resources as us. Therefore, we should talk with others about any plans to change our activities or resource use, and what the implications might be.

The RMA does not require you, as an applicant, to consult anyone about your application for resource consent, but sometimes there's a duty under another Act to consult; these duties must still be complied with.

The RMA does require people applying for resource consent to submit a record of any consultation undertaken and the responses received. This can give decision-makers the information they need to make well-founded decisions. And of course, there are benefits for the applicant where consultation is concerned – see *Benefits of consultation* on page 9.

While you are not obliged to consult or get written approvals from affected parties, doing both will usually allow the smooth processing of your consent by the council. It can save you time and money. Discuss these potential benefits with the council while you're preparing your application.

Consultation principles

A number of principles that help define the meaning of good consultation have emerged from case law under the RMA:

- » **Early** – consult as soon as possible when the details of your proposal are less 'set in concrete' and you have more flexibility to make changes to address issues raised by interested and affected persons.
- » **Transparent** – be open about what you want to achieve, what scope you may have to change certain aspects of your proposal, and why there might be elements that you may not be able to change.
- » **Open mind** – keep your views open to people's responses and to the benefits that might arise from consultation.
- » **Two-way process** – consultation is intended as an exchange of information and requires both you and those consulted to put forward their points of view, and to listen to and consider other perspectives.
- » **Not a means to an end** – while consultation is not an open-ended, never-ending process, it should not be seen merely as an item on a list of things to do that should be crossed off as soon as possible.
- » **Ongoing** – it may be that consultation, or at least ongoing communication, will continue after your application has been lodged or even after a decision has been made.
- » **Agreement not necessary** – consultation does not mean that all parties have to agree to a proposal, although it is expected that all parties will make a genuine effort. While agreement may not be reached on all issues, points of difference will become clearer or more specific.



Benefits of consultation

This section outlines the benefits of consultation. At its best, consultation can improve your project and the resource consent application process.

Improving outcomes

- » ***Gaining local knowledge*** – consultation may reveal information on a range of issues (including things such as local traffic or flooding conditions) that is important to your proposal but that you might not otherwise be aware of.
- » ***Incorporating tāngata whenua values and interests*** – there may be matters of significance to Māori, such as traditional burial sites, that can be accommodated into your proposal. This information will be held by local tāngata whenua (iwi, hapū, whānau).
- » ***Enhanced proposals and improved environmental outcomes*** – consultation may provide input that will improve your project or idea and reduce its impact on the natural, physical, cultural and social environment.
- » ***Making the consent process easier*** – consultation may lessen any concern, doubt or confusion people may have about your proposal (in the absence of accurate information). This can reduce potential opposition, and improve the chances of consent being non-notified and granted.

Be as flexible as you can over elements of your proposal that are likely to be of concern. Even if they cannot be removed altogether, they may be designed or handled in a way that reduces opposition without disadvantage to your idea.

Relationship building

- » ***With neighbours and community*** – the resource consent process can sometimes be the start of your involvement with a particular community. Having a good relationship can enhance public relations, build an awareness of and market for your service or product, and help with a future project or an expansion to your current proposal.

- » ***With tāngata whenua*** – the resource consent process can sometimes be the start of your involvement with tāngata whenua and their values and interests in the environment. Participation of tāngata whenua in your proposal can result in an improved application and build positively on the knowledge and special relationship Māori have with the environment.

Promote any elements of your proposal that could have a benefit for, or work in with, the interests of neighbours, the community and tāngata whenua. Consider their needs. See your proposal from their perspective.

Tāngata whenua

- » ***Benefit by understanding the Māori world view*** – tāngata whenua (iwi, hapū, whānau) have a long-standing association with the natural environment. Understanding these cultural values and interests can result in improved proposals.
- » ***Unique to New Zealand and our national identity*** – tāngata whenua participation in the resource consent process can foster kaitiakitanga (the exercise of guardianship expressed in part through an ethic of stewardship) and other Māori concepts that are unique to our country. These may be used to enhance your proposal.
- » ***Helping council assess RMA obligations*** – ensure the council can see how your proposal has addressed RMA requirements relating to Māori and the Treaty of Waitangi, and strengthen relationships.

Be as responsive as you can. Identify and address issues of interest to tāngata whenua groups before they are raised as a concern with the council.

Who do I consult?

This section will help you identify who you should consult about your proposal.

Difference between interested and affected parties

A common area of confusion is the difference between people ‘interested’ in your application or proposed activity, and ‘affected’ persons. The term ‘interested persons or parties’ refers to a broader group than ‘affected persons’, and includes



everyone who has an interest in an application, geographic area or issue. The council may suggest that you talk to ‘interested persons or parties’ before lodging your application, and who these people may be.

‘Affected persons’, on the other hand, are people who the council decides will experience an adverse effect from your proposal that is “minor” or “more than minor” (but not “less than minor”). For example, your neighbour may be affected by shading from your proposed new building, or people in the immediate vicinity of your property may be affected by noise generated by the proposed activity. Once your application is lodged, the council determines who may be an ‘affected person’ and can ask you to obtain their written approval.

What determines who I should consult?

Who you should consult can depend on the nature of your proposal and any effects potentially generated by it.

Statutory considerations also affect whether or not you should consider consulting some people. The RMA and regional and district plans specify that, in some cases, councils can only take into account certain matters in considering an application. These cases are where councils have restricted their control or limited their discretion in plans (referred to as ‘controlled activities’ and ‘restricted discretionary activities’ respectively).

The RMA also allows councils to choose not to consider the effects of activities that are otherwise permitted by their plans. In some cases, the extent of consultation may be more limited if your proposal has only limited effects over and above those of an activity that doesn’t require consent.

Always think carefully about whether you should consult with tāngata whenua to ensure their relationships with their resources and the environment are given due regard, as this is a matter the council has to take into account in its decision-making.

Ask the council to guide you on who you should consult and for what reason.

Examples of who to consult

Before you do any consultation, you need to think about the nature, extent and size of potential effects. What kind of effects will your proposed activity create – visual effects, traffic, noise, dust? How far will they extend – to adjoining properties, to the whole neighbourhood, to a stream catchment? How large are those effects in the context of the environment – minor, moderate, significant?

Those who may be consulted include:

- » owners, occupiers and users of adjacent and nearby land
- » downstream water users
- » users of the same groundwater resource
- » occupiers of land living down-wind of a proposed discharge to air
- » people or groups with a specific interest in the site or area (such as guardians of an estuary)
- » tāngata whenua (iwi, hapū, whānau)
- » statutory, infrastructure and utility organisations (such as government departments, councils, and roading and rail authorities).

Make sure you think carefully and laterally about who you consult to ensure it is effective. The council may identify someone as being adversely affected and require approval from someone you have had no previous communication with. If you are already consulting with them, then your request for their written approval may be greeted more favourably.

Consultation with tāngata whenua

Tāngata whenua may have a stronger interest and concern than other parties over some aspects of your proposal. Issues of particular importance to tāngata whenua include any discharges to water bodies, activities in certain areas of particular interest, or activities that have the potential to affect natural resources such as greenstone (pounamu), flax, or freshwater species like inanga. Tāngata whenua may also have concerns that extend beyond the purely physical and into spiritual, ancestral or historical realms, such as a deep affinity with particular



food-gathering areas, or the location of burial grounds, or major battlefields. These interests and concerns may not be readily apparent to many applicants, or to visitors to a particular site.

The key is understanding the nature of a connection *tāngata whenua* may have with a particular place or feature, and understanding what impact your proposal might have on that place or feature, and therefore on that connection.

There can be a number of different *tāngata whenua* groups that you may need to consult. Much depends on the nature of your proposal, whether or not the differing groups have different positions on particular related environmental issues, and the organisational structure and decision-making processes within each group.

Sometimes *tāngata whenua* groups do not agree about who has authority over or interest in a particular locality. Terms used by *tāngata whenua* may include *ahi kaa* (continuous occupation), *mana whenua* (customary authority), or *kaitiakitanga* (guardianship). In such cases, you should consider consulting with all the parties concerned. Some *tāngata whenua* groups you may consult include:

- » *kaitiaki* – generally a person or group with responsibility, concern or guardianship for a particular area or water body such as a river. *Kaitiaki* are likely to be mandated by a *hapū*, *whānau*, *iwi*, *ahi kaa* or *mana whenua*
- » *iwi* – a tribe, often represented by a trust, *rūnanga* or *iwi* authority
- » *hapū* – a sub-tribe or group of *whānau* (extended family groups)
- » other groups – including individual *marae*, Māori land trustees, or special committees established through a council.

Councils are required to keep and maintain a record of each *iwi* authority and groups that represent *hapū* for the purposes of the RMA.

- » Ask the council to guide you on which tāngata whenua group(s) should be consulted and what issues they are likely to be interested in.
- » Te Puni Kōkiri maintains a website (Te Kahui Mangai) that provides a national list of iwi and Māori organisations whose mandates to represent their iwi and hapū have been recognised by the Government. The site provides a useful starting point to find out basic information about iwi, hapū and marae. Visit: www.tkm.govt.nz

How do I consult?

This section outlines some basic elements of consultation. However, consultation processes will differ depending on the nature of your project or proposal, the environment and the community in which it is proposed.

Where do I start?

- » Discuss the proposal with the council who may be able to help you list the parties to consult.
- » Prepare consultation material such as:
 - a brief written description and plans of your idea/proposal
 - a tentative assessment of environmental effects
 - measures you would propose to reduce the extent or impact of those effects.
- » Consult with identified persons and groups:
 - by letter (usually) in the first instance with an offer of follow-up contact to discuss the proposal in the following days
 - by telephone (where possible) to confirm that they've received the information you sent, and to arrange further communication (preferably face-to-face) to determine any issues
 - at an on-site meeting, where you explain your proposal.
- » Arrange further information and meetings as necessary.

Your consultation material can form the basis for the assessment of environmental effects (AEE) that you need to submit along with your application. You should be asking those you consult with whether you have accurately



described the potential effects of your activity, whether they can identify any you have missed, and whether the way in which you propose to deal with those effects is adequate.

Identify as soon as possible whether the proposal may have significant environmental impacts.

Feel free to suggest time frames within which you would like a response from those you consult. These time frames shouldn't be too short unless the party concerned is prepared to make such a commitment. You'll need to be flexible and open to negotiation. Try to reach agreement with the people you consult with when they will be in a position to respond. This discussion will give you a good sense of each others' commitments and obligations.

Avoid large, public meetings because it can be difficult for you and other parties to communicate well. For large proposals, consider open days or evening events (advertise by letter-drop if for a large audience), one-on-one meetings, or a series of small meetings of people with similar interests.

Is consultation with tāngata whenua different?

Generally not, but keep in mind the following:

- » There may be more than one tāngata whenua group for an area (iwi, hapū, whānau).
- » Tāngata whenua have a special relationship with the environment that is specifically provided for in the RMA.
- » Tāngata whenua groups often work to different time frames than you are familiar with. They often need to reach consensus among marae committees and/or elders on an application before responding. Meetings are often held on a monthly basis. Many of these meetings are voluntary and will be held during weekends, or early week evenings.
- » Tāngata whenua usually prefer personal contact and face-to-face meetings. They may not respond to letters.

- » Protocols may apply at marae meetings including *koha* (donations).
- » No one person may hold all the information you are seeking. Sometimes information will be held only by specific families who for cultural reasons prefer that others do not speak on their behalf.
- » Iwi management plans (if prepared) contain useful information on what matters to a particular tāngata whenua group, and can help you focus your consultation efforts. Councils are required to keep a list of iwi management plans lodged with them and usually make them available for public viewing.
- » There may be value in seeking a report from the group that explains these cultural values, interests and associations. Sometimes referred to as a 'cultural impact assessment', this report can form part of your assessment of environmental effects, and help you consider and reach a position on the effects of your proposal. Such reports may range from a simple letter to a substantive report which can be commissioned as a technical report.
- » Tāngata whenua groups may need to seek reimbursement for time and expense costs incurred during consultation.

Try to reach agreement with tāngata whenua groups on how you will engage them in your proposal. Ensure the people with whom you are speaking have the authority to represent the view of their iwi, hapū or whānau. This may involve something as simple as an email. On the other hand, it might involve developing a memorandum of understanding or protocol for ongoing communication over the operation of your project (once established), or for consultation over future projects.

Find out whether the group has a policy of charging for consultation or advice given. If it does, then ask for a schedule of fees and standard disbursements, and/or establish terms of reference before any work is done.



What next?

- » Review your proposal in light of any issues raised.
- » Provide feedback (preferably in writing) to parties consulted.
- » Continue communication as necessary throughout the resource consent process including further correspondence and meetings.
- » Keep a full record of the consultation you have undertaken and submit it to the council as part of your application, even where consultation has been unsuccessful or has met with continued silence.

Keep copies of correspondence and make notes at consultation meetings to allow an accurate record to be provided to the council.

What is expected of me?

Councils expect applicants will:

- » keep in touch with council staff throughout the resource consent process
- » report on any consultation undertaken, and any response to the views of any person consulted (as required by clause 6(1)(f) of Schedule 4 of the RMA
- » take the lead role in consultation unless it is a major project warranting the council's direct involvement.

Interested and affected parties expect applicants will:

- » demonstrate that they will be flexible
- » provide adequate information and sufficient time that allows a thoughtful, meaningful response to be prepared
- » consult during the earliest possible stage in the development of your ideas (rather than being expected to respond to a final, inflexible version of the project)
- » appreciate the time, cost and resource implications on parties being consulted.

Clearly set out to groups being consulted how the consultation may be limited, particularly where councils will only be considering certain aspects of the proposal.

Make it clear to groups whether you are consulting generally, or specifically for the purpose of obtaining their written approval (so the application can be processed without notice).

Make personal contact in meetings and site visits to allow people being consulted to put a face to your project and show that you genuinely acknowledge their role.

Having owners or senior managers of your company or organisation attend consultation meetings, rather than just more junior staff or consultants, is a sign of respect to those you are consulting with.

Tāngata whenua also expect applicants will:

- » acknowledge the legitimacy of tāngata whenua involvement
- » appreciate that there may be more than one tāngata whenua group for any area and that different groups may have different issues
- » understand that tāngata whenua have wide and varied interests in the environment and may be under-resourced (eg, they may need to recover any actual and reasonable costs of responding to requests for consultation)
- » acknowledge and work with tāngata whenua protocols
- » acknowledge that due to the need to reach consensus, tāngata whenua groups may work to longer timeframes
- » appreciate that their interest may extend beyond the consent process into implementation and ongoing operation of the activity (eg, visiting the site once your proposal has begun operating, and being involved in any monitoring of effects associated with the operation of your proposal).

Consider making provision in any consultation or draft application material for the continued involvement of tāngata whenua groups in the implementation and ongoing aspects of your proposal.



What can I expect in return?

Applicants can expect councils will:

- » provide advice on who may need to be consulted and how this might most effectively be done, particularly where tāngata whenua groups are concerned
- » keep and maintain records and details of all iwi and hapū within their region or district, and any planning documents prepared by them and lodged with the council
- » acknowledge that consultation may be part of a long-term relationship
- » have developed relationships with tāngata whenua groups that will provide you with a good basis for your own engagement with these groups
- » make available, or at least draw your attention to, relevant documentation and information to help consultation (such as iwi management plans)
- » review the consultation that you have carried out, particularly in the lead up to the determination about affected persons and any notification of your application
- » advise where you may need to revisit your consultation.

Applicants can expect interested and affected parties will:

- » acknowledge the applicant's investment in an idea and right to advance a proposal
- » appreciate the time and cost implications you may face in consulting with them
- » recognise that a proposal is just that and may be changed before being approved
- » provide open, honest and clear responses to consultation
- » provide timely responses to consultation
- » focus on the environmental effects of the proposal and not on issues beyond the scope of the resource consent process
- » respond with positive and proactive feedback on any areas of concern.

Applicants can also expect tāngata whenua will:

- » appreciate that applicants may be unfamiliar with tāngata whenua concerns and protocols, as well as the number of tāngata whenua groups and different concerns they may have
- » understand that as an applicant, you may not have the power or ability to resolve problems that fall outside the context of the resource consent process, or the effects that could be connected to your proposal
- » operate in a transparent and professional manner, by providing estimates for the costs of their involvement, and breakdowns of costs incurred in any invoices for their time
- » stick to any commitments you may have jointly reached over the exchange of information, or timelines for responses.



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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. This includes the diagram on page 2 which is a very generalised overview of the resource consent process. The diagram is intended to be indicative only and should not be relied upon. Direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

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