



Ministry for the
Environment
Manatu Mō Te Taiao

AN EVERYDAY GUIDE TO THE RMA > SERIES 3.3

Appearing at a Council Resource Consent Hearing





Series Overview



- 1.1 Getting in on the Act
- 1.2 Resolving Resource Management Act Concerns
- 1.3 Enforcement
- 1.4 National Level Guidance and Processes



- 2.1 Applying for a Resource Consent
- 2.2 Consultation for Resource Consent Applicants



- 3.1 Your Rights as an 'Affected Person'
- 3.2 Making a Submission about a Resource Consent Application
- 3.3 **Appearing at a Council Resource Consent Hearing**



- 4.1 The Designation Process



- 5.1 Making a Submission about a Proposed Plan or Plan Change
- 5.2 Appearing at a Council Plan or Plan Change Hearing

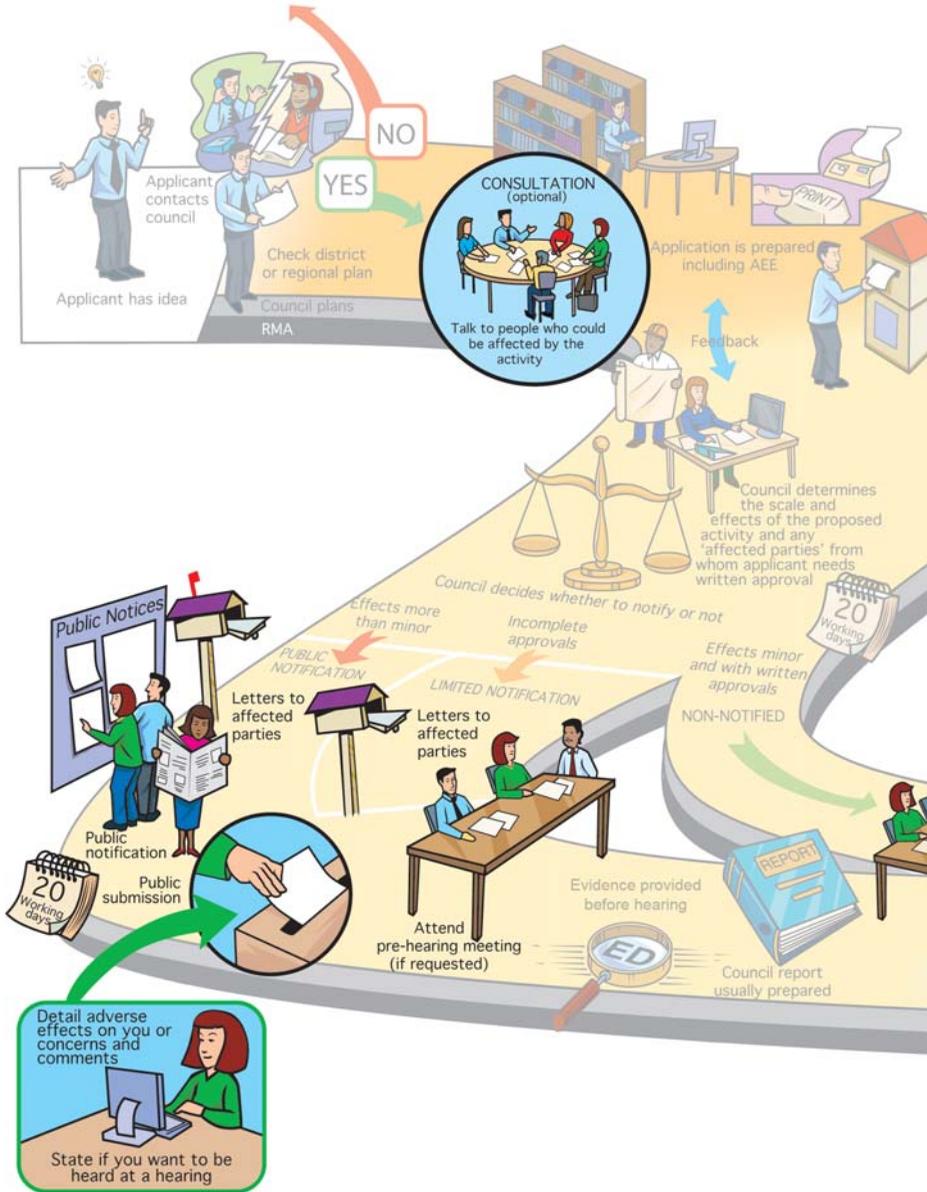


- 6.1 Your Guide to the Environment Court
- 6.2 You, Mediation and the Environment Court
- 6.3 The Environment Court: Awarding and Securing Costs

Contents

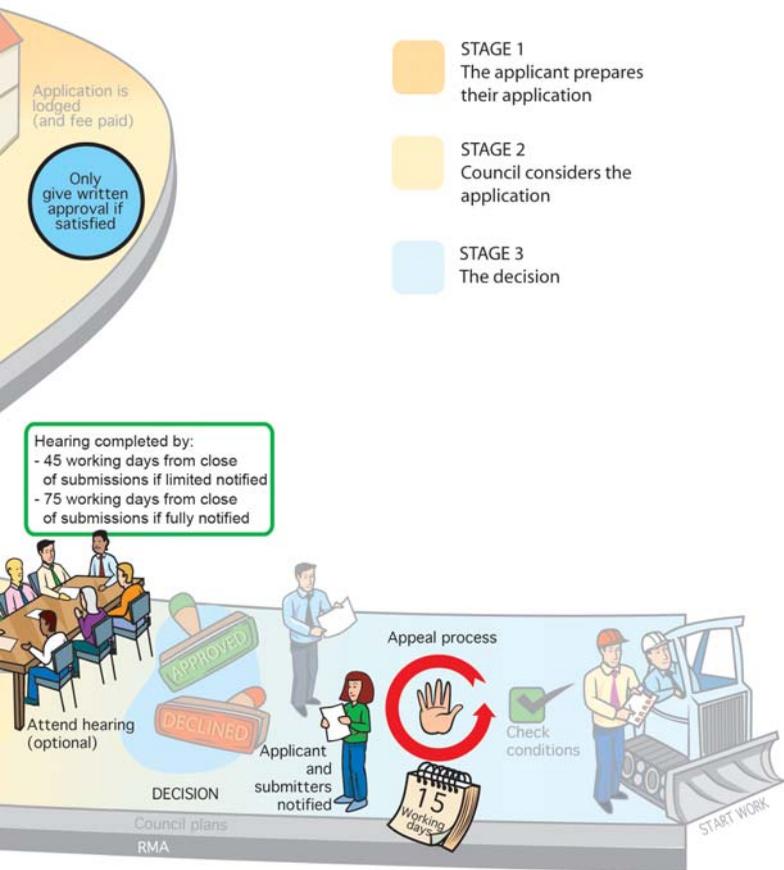
Getting involved in the resource consent process	2
Introduction	4
Setting the scene: plans and consents	5
Written submissions	6
What happens at a hearing	7
Making a statement	7
Who else will be at the hearing?	8
Getting ready for the hearing	8
Pre-hearing meetings	9
How to do well on the day	10
Make it clear and easy to hear	10
Stick to the point	10
Remember the hearing is neutral	10
Use an advocate or a lawyer if that will help	11
Use expert witnesses if that will help	11
Providing evidence before the hearing	12
Speaking with other submitters	12
The order of events at a hearing	13
Rights and rules: things you need to know	14
Can I choose who is on the hearings panel?	14
Can I have support people?	15
Will the hearing recognise tikanga Māori?	15
Can I ask questions?	15
What if I disagree with what someone else says?	15
Will I be cross-examined?	16
What will it cost me?	16

GETTING INVOLVED IN THE RESOURCE CONSENT PROCESS



APPEARING AT A COUNCIL RESOURCE CONSENT HEARING

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

The Resource Management Act 1991 (RMA) sets out how councils make decisions about activities that might affect the environment. Sometimes, a council will hold a public hearing to help it make a decision. There are two sorts of hearing where RMA matters are considered. First, there are hearings relating to a council's district or regional plans. Second, there may be hearings on individual development proposals. These either relate to applications for **resource consent** or notices of requirement. Hearings give people the chance to have their say about what a council or an applicant for resource consent is proposing.

This guide is primarily for **submitters on resource consent applications** – people who are going to appear at a council hearing. The principles outlined here also apply to hearings for a notice of requirement for a designation (a provision in a district plan informing the community of an intended use of land in the future for a particular project, eg, road). For more information about the designation process see 'An Everyday Guide to the RMA' booklet *4.1 The Designation Process*. For more information about appearing at a council plan or plan change hearing see 'An Everyday Guide to the RMA' booklet *5.2 Appearing at a Council Plan or Plan Change Hearing*.

This guide explains:

- » how to get involved in a council hearing
- » what happens at a hearing and who will be there
- » how to prepare and do well on the day
- » the rights and rules that affect you
- » your responsibilities.

A council hearing can look a bit like a court, with lawyers, witnesses and a hearing committee listening and asking questions. But it's not supposed to be too formal, or off-putting. Council hearings are designed for you to have your say and to let other people have theirs. They're a key way for the community to be involved in council decisions about the environment.

Some resource consents and designations are heard and decided by a board of inquiry or the Environment Court. The general principles for a hearing outlined in this booklet are also relevant for hearings conducted by these bodies. However, there are some procedural differences, such as cross-examination, that you

APPEARING AT A COUNCIL RESOURCE CONSENT HEARING

should understand before attending these hearings. If you are involved in one of these hearings you can find more information in 'An Everyday Guide to the RMA' booklets *1.4 National Level Guidance and Procedures* and *6.1 Your Guide to the Environment Court*.

Setting the scene: plans and consents

City, district and regional councils create **district plans** and **regional plans** to set out how they will manage the environment. These plans contain rules that control what people can do in the environment.

Regional plans tend to concentrate on particular parts of the environment, such as the coast, soil, a river or the air.

District plans contain the objectives, policies and rules a council will use to manage the use of land in its area.

Some activities can be done as of right, but others need permission from the local council. This permission is called a **resource consent**.

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

Councils use the process set out in the RMA to decide whether to publicly **notify** a resource consent application. If an application is publicly notified, anybody can make a written submission that either supports or opposes the application (all of it or just a part). People can also forward a neutral submission that simply provides additional information to help the council in its decision-making. In some cases, the council may 'limited notify' an application, meaning it notifies only those people it believes are adversely affected. If so, only those people can make a submission. People who make submissions can also speak at a hearing held by the council, if they indicate they wish to do so on the submission form.

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

Limited notifying a resource consent application means only certain people who are adversely affected by a proposal receive notice of the application.

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

Written submissions

A written submission is a statement that explains why you support or oppose a **resource consent** application, notice of requirement for a designation, or proposed plan or plan change. Submissions can be neutral but should identify additional information you think the council should consider in making its decision. A submission also states whether you want to speak at a hearing if the council holds one.

Submitters who intend to call expert witnesses must make the written evidence of those experts available to the council at least five working days before the hearing. This evidence will then be circulated to other submitters before the hearing.

For more information about making a submission see 'An Everyday Guide to the RMA' booklets *3.2 Making a Submission about a Resource Consent Application* and *5.1 Making a Submission about a Proposed Plan or Plan Change*. For more information about designations, see 'An Everyday Guide to the RMA' booklet *4.1 The Designation Process*.

Council officers usually prepare a report on the application and send it to all submitters 15 working days before a hearing is held. This report may include recommendations, which the hearing committee can refer to in making its decision. This report constitutes evidence, like any other information presented at the hearing; the hearing committee is not bound to follow the officer's recommendations, but can use them as a guide.

The applicant's evidence, including expert evidence, will be made available by the council, usually 10 working days before the hearing.



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.

What happens at a hearing

The hearing gives you the chance to explain your submission to the hearing committee, and present evidence that supports your submission.

A **hearing committee** is made up of councillors and/or independent commissioners (one of whom may act as the chairperson). Their role is to listen to arguments for and against a proposal put forward by the applicant and submitters, and they are usually authorised to make a final decision on it.

You'll have the chance to read out a written statement, and to present evidence that supports your submission. The hearing committee might ask you questions about your submission, your statement, or your evidence. After everyone has had a chance to speak, the hearing committee makes its decision. This is usually done in private, but occasionally in public.

Making a statement

The statement you read out at the hearing will expand on the points you've made in your written submission. Someone else can read out your statement for you if you want.

Your statement might include examples that illustrate some of the points in your submission, or comments about the recommendations in the council officer's report. You can also just read straight from your submission.

Plan your statement carefully, and practise reading it. The hearing is your chance to give voice to your submission.

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

Who else will be at the hearing?

The hearing committee may be made up of any number of people, and may include councillors and/or independent commissioners. Independent commissioners will be used if the applicant or submitters have requested them, if there is a conflict for councillors in hearing the application, or if specialist expertise is required.

A council officer will generally be there to present their report about the consent application or notice of requirement. Other council officers, such as urban designers or traffic engineers, might also be there to give technical advice.

The applicant's representatives will be present at the hearing, and they may have an advocate or a lawyer to back up their proposal. They may also have expert witnesses, who present evidence on particular subjects, such as planning, noise, traffic or ecological effects.

The other submitters will be there as well. They might also have brought an advocate, a lawyer or expert witnesses (such as a professional with expertise on a matter which the submitter submitted on).

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

Getting ready for the hearing

The council will tell you the date, time and location of the hearing at least 10 working days beforehand. You can start getting ready well before then, preparing and practising your statement, and gathering your evidence. Nothing beats preparation for getting your point across on the day.

- » It is a good idea to prepare a written statement to read out at the hearing. Identify the key points you want to get across, and back them up in your statement.

APPEARING AT A COUNCIL RESOURCE CONSENT HEARING

- » Practise reading out your statement. You want to get it right and to look confident and comfortable. Practising will make sure you do.
- » Think about what questions the hearing committee might ask you, and how you can answer them.
- » Go to a council hearing beforehand to see how it works and get a feel for the process. You don't want surprises on the day.

At least 15 working days before the hearing, you'll get a copy of the council officer's report about the resource consent or notice of requirement. It is important that you read the report before the hearing. Think about what's in it – is there anything you want to deal with in your statement?

If the applicant has prepared evidence for the hearing, they are required to provide this to the council at least 10 working days before the hearing. The council will then circulate this evidence to all submitters.

If you have any evidence from experts assisting you (eg, planner, water quality scientist, soil scientist), this needs to be provided to the council and the applicant at least five working days before the hearing. The council must make this available to all submitters.

Pre-hearing meetings

You might be invited or be required to attend a pre-hearing meeting. The applicant, other submitters and/or other people (such as the council officer who prepared the report) may also attend the pre-hearing meeting. A pre-hearing meeting can be a useful way to clarify matters or to try and sort out issues before a hearing, in a relatively informal setting.

If required to attend a pre-hearing meeting, you must attend. If you don't attend and don't have a reasonable excuse, the council can decline to process the application (if you are an applicant) or decline to consider your submission (if you are a submitter). You will not be able to appeal or be involved in the decision at a later date.

Everyone at the hearing will get a copy of a report about what went on at the pre-hearing meeting, including the issues that were agreed on and those that are outstanding. The hearing committee must consider this report in making their decision.



How to do well on the day

You want to make a good, strong presentation. You want the hearing committee to focus on your statement and on your evidence. Keep your statement simple, make your key points clear, speak clearly, and be yourself.

You can expect the hearing committee to treat you with dignity and respect, and to put you at ease. You should treat them with respect also.

Make it clear and easy to hear

Read your statement clearly and slowly enough to be understood. Speak clearly and try not to repeat yourself.

Stick to the point

Everyone is there for the same reason, and needs their views to be heard. The hearing committee is only interested in the relevant facts and opinions.

- » Stick to the facts in your statement.
- » Focus on the environmental matters, not simply what you like and dislike.
- » Expand on your submission, but don't introduce any new issues.
- » Don't repeat yourself or be long winded.
- » Don't play on emotions or breach protocol.

Remember the hearing is neutral

Councillors on a hearing committee aren't there as politicians. They're there as decision-makers who have to weigh up both sides of an argument.

- » Leave your personal opinions about the council or the applicant outside the door.
- » Don't use the hearing as a chance to discuss or argue about other issues. Focus on the issue at hand.



Use an advocate or a lawyer if that will help

- » Use an advocate (a spokesperson) if you're nervous about making a submission, or if a group is making a submission and wants one person to speak for you all. The advocate could be a member of your group.
- » Use a lawyer as your advocate if your submission explores legal matters, or if you think a professional interpretation of legislation or case law is needed.

Use expert witnesses if that will help

Members of the hearing committee won't necessarily be experts on the effects of the application that may be of concern to you. They'll want to hear good, solid evidence to help them make a decision.

The applicant might use expert witnesses to support their case. So it might make sense for you to use expert witnesses as well, depending on what your concerns are. 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. Instead, focus on what you consider to be facts, and your own recollections and observations.
- » Use expert witnesses (such as planning consultants, surveyors, engineers or scientists) to present evidence about technical topics (such as heritage, soil stability or microbiology) when you need to.
- » Before you start, make sure any professional witness you use is able to present evidence that supports your point of view.
- » Bear in mind, however, that expert witnesses are not 'hired guns'. They must be able to support their own conclusions.
- » Check the costs before you employ an expert witness and explore whether the cost of experts can be shared with other submitters. You can get a list of who the other submitters are from the council.

Providing evidence before the hearing

Providing evidence before the hearing is useful, especially where the application is complex, or where there are conflicting opinions between experts. The length and associated cost of any hearing could be reduced by narrowing the scope of evidence and identifying the matters remaining in contention. Providing evidence before the hearing may help the hearing committee to be better prepared and to assume a more inquisitorial role.

It is mandatory for evidence to be exchanged before the hearing. The mandatory deadlines are as follows:

Information to be circulated	Due date for circulation
The council officer's s42A report and any briefs of evidence from expert witnesses	15 working days before hearing
The applicant's evidence, including expert evidence	10 working days before hearing
Submitters who intend to call expert witnesses must make the written evidence of those experts available	Five working days before hearing

Providing evidence in this way is sometimes called 'pre-circulation' of evidence. The consent authority's role is to make this evidence available, and notify all the parties that the evidence is available for viewing.

Speaking with other submitters

If the hearing involves many submitters, you may make your submission along with other submitters speaking about the same topic as you.

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

The order of events at a hearing

The hearing committee can direct the order of events at a hearing, including the order in which evidence and submissions are presented. But typically, most hearings follow the same pattern. Here's where your submission fits in:

1. The chairperson usually welcomes and introduces everyone.
2. The applicant or requiring authority usually presents a statement and answers questions from the hearing committee. Others (eg, expert witnesses) may also discuss their pre-circulated evidence in support of the applicant's statement. The hearing committee may ask questions of anyone who has presented evidence.
3. **The submitters present their cases and answer questions from the hearing committee.** Submitters might also call on others to present evidence supporting their statement. Any expert evidence will have been circulated before the hearing. The hearing committee may ask questions of anyone who has presented evidence in support of a submitter. This might take more than a day, and you may have to go to the hearing on more than one occasion.
4. A council officer may discuss their pre-circulated evidence about the application and answer questions from the hearing committee.
5. An applicant or requiring authority has the right of reply to points raised by, or on behalf of, submitters and council staff.
6. The hearing committee might ask more questions of the council officer, the applicant or requiring authority, or the submitters.
7. A hearing must be concluded no later than 75 working days after the close of submissions for a publicly notified application and 45 working days after the close of submissions for a limited notified application (unless the applicant has requested that the application be placed on hold). Once closed, the hearing committee makes its decision. This is usually done in private. The committee has to make a decision on a resource consent within 15 working days of closing a hearing.

8. The council writes to you to tell you what the decision is. If you consider that the council is wrong, you may be able to appeal all or part of the decision to the Environment Court. This must be done within 15 working days of the issue of the council decision.

Get professional advice if you're thinking about appealing the decision. A lawyer, planning consultant or someone with similar professional expertise should be able to tell you if you are likely to be successful. Appeals are often complex and expensive, and need to be well thought out. Getting professional advice early on can save you significant 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 all the parties involved. For more information see 'An Everyday Guide to the RMA' booklet *6.1 Your Guide to the Environment Court*.

Rights and rules: things you need to know

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

Can I choose who is on the hearings panel?

Normally, the council has an established hearings panel made up of elected councillors. The council also generally has a list of approved independent commissioners; sometimes, they may hold the hearing and make the final decision instead of elected councillors.

If you have any concerns about who will be hearing the application, then you should discuss this with council staff. In some cases, the council may decide to change the panel members or a commissioner, but only if they consider that there are good grounds for doing so and no one is disadvantaged by the decision.

An applicant or submitter(s) can formally require the council to appoint an independent commissioner – or an entire panel of independent commissioners – to hear and decide resource consent applications. A submitter(s) who requests independent commissioners will have to meet the costs involved, unless the applicant also makes the same request (in which case, the cost lies with the applicant).

Can I have support people?

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

Will the hearing recognise tikanga Māori?

Councils must allow for submissions and evidence in te reo, but you must ask for this in your written submission on the application. Also ask in your written submission if you have other specific requests for dealing with Māori protocol or other cultural issues. The council then has reasonable time to appoint an interpreter, or make other necessary arrangements.

Councils will generally 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. Ask the chair of the hearing panel before doing so.

Only members of the hearing committee can ask questions about submissions or evidence.

You are not allowed to ask the council officer, the applicant, the witnesses, or an advocate or lawyer any questions. You can suggest questions for the committee to ask, but the committee doesn't have to ask them. Raise any questions you want to ask with the chairperson when you are giving your evidence.

What if I disagree with what someone else says?

At the hearing, you can only speak directly to the hearing committee (through the chairperson). You must never interrupt someone else who is speaking at the hearing even if you disagree with what he or she is saying.



Will I be cross-examined?

Cross-examination means being asked questions by lawyers representing other parties. No one can be cross-examined at a council hearing. Submitters and other witnesses might be asked to take an oath, but this doesn't usually happen. The hearings panel may ask questions of you after you have spoken to your submission.

What will it cost me?

You have to pay for your own costs, such as travel to and from the hearing, time off work, and lawyers' and professionals' fees. You don't have to pay for anything else, unless you have asked for the application to be decided by an independent commissioner rather than the councillors, and the applicant has not made the same request. In this case, you have to pay the additional costs of the commissioner(s), over and above what it would cost if councillors heard and decided the matter. Council can provide estimates of these charges, which will be shared equally between any other submitters that may have made the same request. These charges will be payable regardless of the decision on the application.

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

- » stick to the issues that concern you and that are relevant
- » make your statement clear and easy to hear
- » use professionals to back up your argument if that would help
- » show respect for the hearing, the hearings panel/commissioners, submitters, and for the hearing's purpose
- » don't grandstand, or get into a debate.



Ministry for the
Environment
Manatū Mō Te Taiao

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.

Third edition published in March 2015 by the
Ministry for the Environment
Manatū Mō Te Taiao
PO Box 10362, Wellington 6143, New Zealand

ISBN: 978-0-478-41278-9
Publication number: ME 1186

For more information on the Resource Management Act:

www.mfe.govt.nz/rma



For more information on the Resource Management Act:

www.mfe.govt.nz/rma