



Ministry for the
Environment
Manatu Mō Te Taiao

AN EVERYDAY GUIDE TO THE RMA > SERIES 3.2

Making a Submission about a Resource Consent Application





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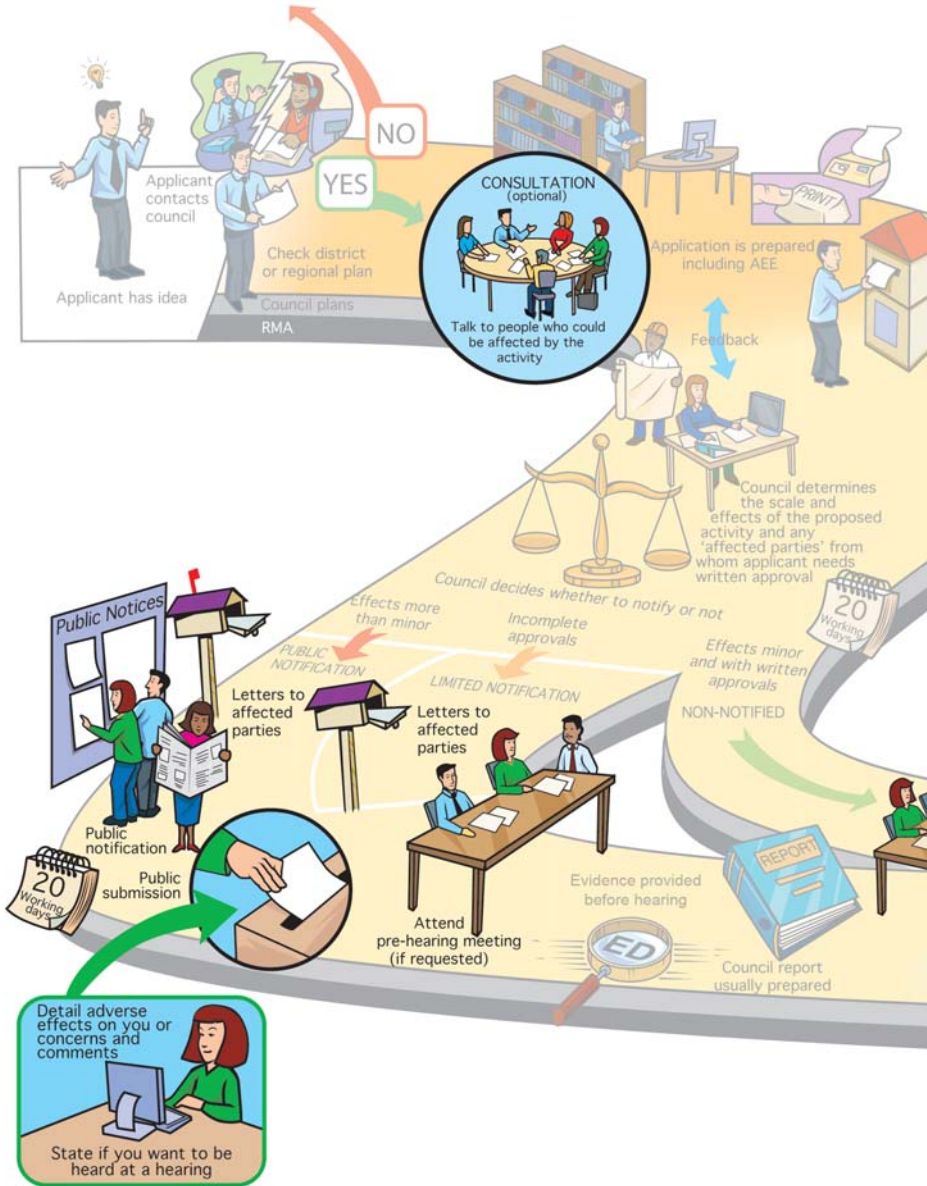


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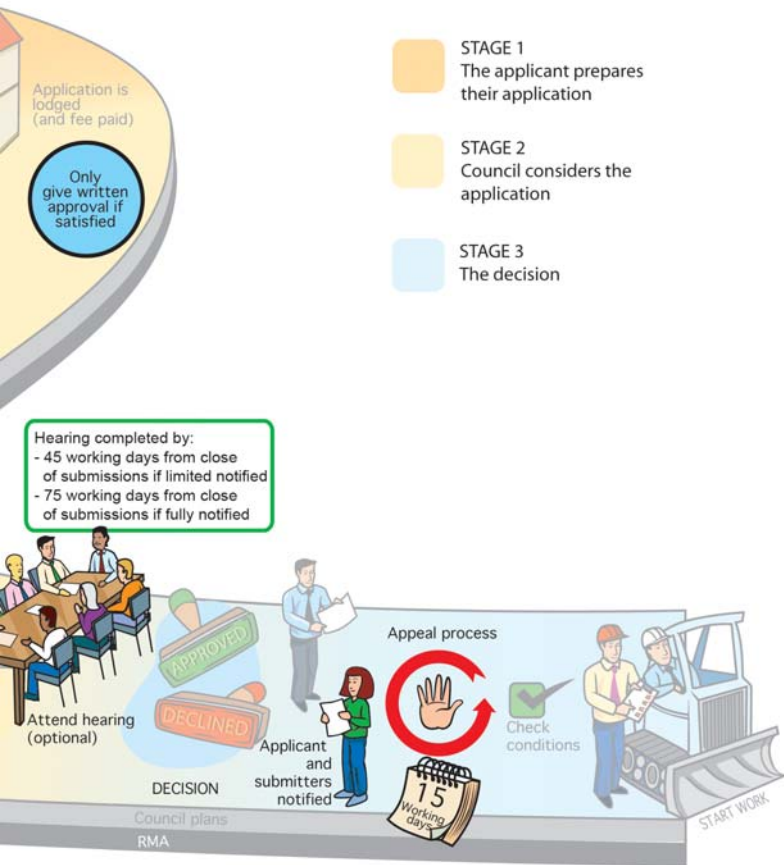
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GETTING INVOLVED IN THE RESOURCE CONSENT PROCESS



MAKING A SUBMISSION ABOUT A RESOURCE CONSENT

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) provides several ways for you to get involved in decisions that affect the environment. One of the main ways is by making a written statement (a **submission**) on:

- » a notified resource consent application, or
- » a notice of requirement for a designation (a provision in a district plan informing the community of the intended use of land in the future for a particular project eg, road), or
- » a proposed plan or plan change.

This guide is for **submitters** – people who want to make a submission about a resource consent application that is processed by a council. The same principles outlined here also apply to making a submission on a notice of requirement for a designation. For more information about the designation process see ‘An Everyday Guide to the RMA’ booklet *4.1 The Designation Process*. For more information about making a submission on a proposed plan or plan change see ‘An Everyday Guide to the RMA’ booklet *5.1 Making a Submission about a Proposed Plan or Plan Change*.

While most resource consent applications are processed and decided by councils, those involving matters of national significance are decided by a board of inquiry or the Environment Court. The Environment Court also processes other applications that are directly referred there on request of the applicant (and agreement of the council). For more information on the processing of consents of national significance see ‘An Everyday Guide to the RMA’ booklet *1.4 National Level Guidance and Processes*.

This guide tells you:

- » what you need to know before you make a submission
- » how to make a good submission
- » what happens after your submission is received.

Generally, anyone can make a written submission about a publicly notified resource consent application or a designation. You don't have to be an expert, but you should have a good understanding of what is and isn't relevant, and only put relevant material in the submission.



Setting the scene: resource consents

Under the RMA councils create district and regional plans that set out how the council will manage and protect the environment. Rules in plans control what people can do in the environment.

Some activities can be done as of right, but others need permission. This takes the form of 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. When a resource consent is granted, it often has conditions about how the activity can be carried out. These conditions help avoid or minimise adverse effects on the environment.

What is a notified resource consent?

An application for resource consent will be **publicly notified** if the proposed activity will have or is likely to have adverse effects on the wider environment that are more than minor, or if requested by the applicant. It may also be publicly notified if the applicant requests full notification, if special circumstances exist, or if the district/regional plan or a national environmental standard says it must. Being publicly notified means that the application is advertised in the newspaper and people can make submissions. Submitters can be for or against an activity, be neutral but provide additional information, and/or request to be heard in support of their submission. Publicly notified applications usually involve a public hearing.

If a council does not publicly notify an application, it must still decide if there are people who will be adversely affected by the proposed activity to a degree that is minor or more than minor (but not less than minor). They are known as '**affected persons**'. The council must notify these people of the application (**limited notification**) unless a rule in a district/regional plan or national environmental standard precludes it. Where an application is limited notified, only affected persons are served notice and can make a submission on the application. For more information about 'affected persons' see the 'Everyday Guide to the RMA' booklet *3.1 Your Rights as an 'Affected Person'*.

Public notification means the council advertises it publicly (in the local newspaper and often on the council website), notifies directly affected people, and often puts a sign up at the site involved. Almost anyone can then make submissions about the activity being notified. If something is limited notified it is only notified to certain people and only those people can make a submission about the activity being notified.

What you need to know before you make a submission

Before you make a submission, you need to understand what the resource consent application is for and how it might affect you.

The first step is to study the full resource consent application. You will normally be sent some information about the resource consent in the mail, and you can request full copies of the application or obtain more information from the council.

- » Make sure you fully understand what the application involves. Ask council officers to explain any part that is unclear.
- » Study the assessment of environmental effects (AEE) attached to the resource consent application. Every application has to have an AEE. This will tell you a lot about the positive and negative environmental effects of the activity, and how the applicant proposes to reduce the negative effects.
- » Think carefully about the effect on you of the activity needing resource consent. Do you think the AEE's description of the likely effect is full and accurate? Do you believe that the scale of likely effects is acceptable? Consider whether the benefits of what is being proposed outweigh your concerns about adverse effects.
- » Refer to the district or regional plan. This may help you get a better understanding of some of the environmental issues the proposal may raise. It might also help you understand which issues are likely to be relevant to the council in deciding whether to approve the application, and which are not.

The objectives or policies in plans will be particularly helpful where they relate to the type of activity proposed, or the area where the activity might take place.

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District and regional plans can be found at the relevant council offices and public libraries. Most plans are also available electronically on the council's website.

- » Ask council officers to photocopy key parts of the application, including descriptions of what's proposed, and any plans or drawings. You can then take the material away to think about it and discuss it with other people. You may be asked to pay for this – check first.
- » Consider talking to the person applying for resource consent about:
 - what they want to do
 - how it will affect you
 - how they will reduce adverse effects on the environment.

Study the application for resource consent, talk to council staff, and talk to other people who might be affected. This will help you identify the matters to raise in your submission and avoid raising matters that are not relevant. The council will not be able to tell you whether to make a submission or not, but they can help to explain the process.

You may want to seek professional advice from a planning consultant, surveyor, engineer or lawyer.

How to make a written submission

Once you've learned as much as you can about the application and carefully thought about the effects it will have, you are ready to write your submission.

- » Get a submission form from your council offices, council website, or from the Ministry's website: www.mfe.govt.nz/rma/rma-processes-and-how-get-involved/rma-forms.

Your submission needs to identify what effect the proposed activity will have on you, and what you think the decision on the application should be.

- » Fill out all the required information including:
 - the name of the council you're sending the submission to

- your full name, address, telephone and fax numbers and email address (or the name and address of your agent if you have employed someone to act for you)
- the name of the person applying for resource consent (the applicant)
- the type of resource consent sought, the proposed activity and location of the resource consent, the site and place to which it applies
- the parts of the application your submission relates to
- whether you support or oppose specific parts of the application
- if there is any specific information you think should be considered when the decision is being made (particularly if you don't clearly support or oppose the application)
- why you are making a submission (eg, you may support or oppose the application, or you may be neutral, but think that additional information needs to be considered)
- whether you think the application should be granted or declined
- what conditions you would like to see on the resource consent if it is granted
- whether you want to speak at a public hearing
- whether you would consider presenting a joint case at a hearing with others who have made similar submissions.

Make sure you state in your submission if you want to speak at a hearing. You don't have to, and while speaking at a hearing can help to highlight what you said in your submission, your submission is just as valid if you don't speak.

If you don't want to be heard, and no one else does, a hearing may not be held.

- » Sign and date your paper submission (electronic submissions do not require a signature).
- » Send your submission by post, hand delivery, fax or email, or lodge it through the appropriate website (if available) before the closing date and time. The notification advertisement will tell you the closing date and time for the submissions to be received. It's usually 20 working days after notification of the application.
- » Send a copy of your submission to the applicant.



Try to get your submission in well before the closing date and time. If you send your submission by post close to the closing date, check to make sure it has arrived in time.

Tips for writing a good submission

Good writing needs good planning! Think about what needs to go in your submission, organise it in a logical order, and stick to the facts. A clear and well-written submission is far more effective than an unstructured and emotional one. Facts supported by evidence, not emotion, is what the council will use when making decisions.

A well-written submission has two key elements: the relevant content and a readable style.

Include the relevant content

- » Remember that the RMA is concerned with managing and protecting the environment.
- » Focus on what you see as the positive or negative environmental effects of the activity needing resource consent. You can focus on the application as a whole, or on a particular part of it.

Negative effects might include:

- » increased noise
- » impacts on traffic or pedestrian safety
- » damage to an archaeological site
- » loss of privacy
- » damage to wildlife habitat
- » pollution of a stream.

Positive effects might include:

- » an area's improved visual appearance because of extra planting and landscaping
- » the upgrading of an existing historic building
- » extra social facilities in an area
- » better flow of traffic through the town.

- » Clearly state your concerns about any environmental effects, and how you want these concerns to be addressed. For example, you might state that:
 - you think the effects will be so serious that the consent shouldn't be granted at all, or
 - you think the proposal could go ahead if certain effects were properly addressed through noise control, landscaping, or some other action.

In a submission you should also:

- » remember that if you speak at the hearing, you'll only be able to talk about issues that you included in your written submission so make sure you include everything you want to speak about
- » clearly state any conditions you want the council to attach to a resource consent if it is granted
- » point out any environmental effects you feel the application doesn't adequately identify (eg, remember your local knowledge might add to the council's understanding of the possible effects of the activity)
- » where appropriate, include maps, diagrams, and professional opinions that support your submission.

Make it clear and easy to read

Planning your submission carefully makes it a lot easier to write and for the council and applicant to understand the points you are making. Unclear and confused writing is often the result of the writer not thinking carefully first.

- » Create an outline of the points you want to make before you start to write. Decide what point you will make in each paragraph, and the order you will put them in.
- » Write short sentences and short paragraphs.
- » Stick to one point per paragraph.
- » Use lists with bullet points to break up long sentences and make a number of related points.
- » Use simple, everyday words. Try not to use lots of jargon or flowery language.
- » If you're having trouble writing something down, ask yourself: 'How would I say it face-to-face?'
- » Type out your submission if possible, and number the paragraphs.



What *not* to do in your submission

Make sure that your submission does not:

- » include any personal feelings you have about the applicant
- » refer to previous applications made by the applicant, or any other development that is not related to this application
- » raise the issue of the commercial success of your business being affected by the establishment of a competitor in your area. This is not a valid environmental concern and your submission may not be accepted. In a worst case scenario, there may be legal issues and costs (including damages for loss suffered) if it is proven in court that you have lodged a submission purely on commercial grounds. However, you can raise the issue of your ability to operate a business being reduced by a direct environmental effect from the proposed activity (such as exposure to noise, dust or smell), if these issues are relevant and they do not relate to trade competition.

To write a clear and effective submission:

- » stick to the current application – don't get distracted by personal issues or past disputes
- » focus on the environmental effects
- » be specific about your concerns and how you want them addressed
- » tell the hearing panel what you want – don't leave them to guess
- » write in clear, simple, everyday language.

What happens next

Once all the submissions have been received, a report will normally be prepared by a council officer that includes:

- » a discussion about the relevant plan and policies
- » a summary of submissions and of the decisions submitters want
- » recommendations about the application.

Hearings

If a hearing is held, the council officer's report is sent out to everyone who made a submission at least 15 working days before the hearing. The hearing panel doesn't have to accept the recommendations made in the officer's report, or any of the planning or expert reports, but it can use them to guide its decisions.

You can attend a hearing as an observer whether you made a written submission or not. However, you can't speak if you have not made a submission.

At a hearing, a committee made up of councillors and/or independent commissioners will hear all the evidence and arguments.

Hearing procedures vary depending on the nature of the application and the submissions lodged. The hearing must be completed no later than 75 working days after the closing date for submissions for a fully notified application and no later than 45 working days after the closing date for submissions for a limited notified application. It may take longer than this to complete the hearing if the applicant requests that processing be suspended during this time.

If you've made a submission and asked to be heard at the hearing, you will get at least 10 days notice of the time, date and location of the hearing. If you are a submitter who intends to call expert evidence, you must give briefs of evidence to the council and the applicant at least five working days before the hearing. The council will distribute your evidence to the other submitters.

If a hearing isn't held, the council makes its decision based on the application, the written submissions and the council officer's report.

For more information see 'An Everyday Guide to the RMA' booklet *3.3 Appearing at a Council Resource Consent Hearing*.

Pre-hearing meetings

At the request of the applicant and/or submitters, or on its own initiative, the council will sometimes hold a pre-hearing meeting before the hearing itself. At a pre-hearing meeting, the applicant and the submitters can exchange ideas and give each other feedback.

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Sometimes solutions to problems can be discussed, and sometimes the applicant and submitters can reach agreement so a hearing won't be needed. Even if all the issues aren't resolved, a pre-hearing meeting often saves time at the hearing itself. The chairperson of the pre-hearing meeting will prepare a report which will be considered at the hearing.

You can be invited or required to attend a pre-hearing meeting. If you are required to attend a pre-hearing meeting, and don't, the council may refuse to consider your submission unless you have a reasonable excuse for not turning up. You will also lose any right to appeal the decision on the resource consent application.

The decision

The council must make a decision about the resource consent application within 15 working days of a hearing closing (or, if a hearing isn't held, within 20 working days of submissions closing).

For a notice of requirement for a designation, the council makes a *recommendation* and the requiring authority must then decide whether to accept or reject the council's recommendation within 30 working days of receiving it. For more information about designations see 'An Everyday Guide to the RMA' booklet *4.1 The Designation Process*. For information on the process for nationally significant proposals see 'An Everyday Guide to the RMA' booklet *1.4 National Level Guidance and Processes*.

If you made a submission, then you'll get a letter from the council telling you about the decision.

If you are unhappy with the council's decision and you made a submission on the application, you can lodge an appeal with the Environment Court. The Court's judges and commissioners must have regard to the decision that is being appealed and can take evidence as read. The Court will then confirm or overturn the decision.

If you're thinking of appealing a decision, get professional advice before acting. A lawyer or other resource management professional should be able to tell you if you are likely to be successful. Appeals are often complex, expensive and take time. They need to be well thought through. Getting professional advice early can save you significant time and costs later.

If you decide to appeal, you must lodge your appeal with the Environment Court within 15 working days of receiving the council's decision. For more information see 'An Everyday Guide to the RMA' booklet *6.2 You, Mediation and the Environment Court*.

If no one appeals against the council's decision, the resource consent is granted or declined according to what was decided. For designations, if the requiring authority decides to proceed with the designation and if no one appeals the requiring authority's decision, the designation is put into the district plan. If appeals are lodged with the Environment Court, the consent or designation can't take effect until those appeals have been resolved.

Making a submission is a key way to get involved with council decisions under the RMA. If you're thinking about making a submission, make sure you're well informed, that your submission gets to the point and that it sticks to the relevant facts. If you don't agree with a resource consent decision, you can only appeal it to the Environment Court if you made a submission.

Ask the council for help if you need to – the RMA aims to achieve a better environment by getting councils and communities working together.

» AN EVERYDAY GUIDE TO THE RMA





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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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For more information on the Resource Management Act:

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