

## A GUIDE TO APPEARING AT RESOURCE CONSENT HEARINGS

### WHAT YOU WILL DO AT THE HEARING?

The resource consent hearing (“the hearing”) gives you the chance to explain your application or submission to the hearing committee, and present evidence in support of your application or 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 evidence put forward by the applicant, the submitters for and against a proposal, and reporting officers (usually Council staff). After hearing all the evidence the hearing committee makes a decision on whether the resource consent will be granted or declined. If granted, they will also decide what conditions are placed on the resource consent.

You will have the chance to make verbal statements, read out a written statement, and to present evidence in support of your application or submission. If you want, you can employ a planning or technical expert and they can appear at the hearing in support of your case. 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). The decision of the hearing committee will be in writing and is sent to all parties.

### Making A Statement

The statement you read out at the hearing should expand on the points you have made in your application or written submission. Someone else can read out your statement for you if you want or if you are unable to attend the hearing yourself.

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 which you will receive at least one week prior to the hearing date. Alternatively, you can also just read straight from your submission.

Plan your statement carefully, and practice reading it. The hearing is your chance to give voice to your submission. A submission will often have a lot more impact if it is presented in person at the hearing.

**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 have any number of people on it, but will usually be made up of three people, and usually these are councillors. In some cases the Council appoints independent commissioners to either hear the application and in other cases there may be a mixed hearing committee made up of councillors and independent commissioners.

A council planning officer will generally be there to present the council officer’s report about the consent application, a copy of which will be sent to you before the hearing. Other council officers, such as urban designers, scientists or engineers might also be there to give technical advice.

The applicant and/or its legal counsel will be present at the hearing. They may also have consultants or expert witnesses who will present evidence on particular subjects, such as planning, noise, traffic or ecological effects.

Other submitters will be there and 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 the public and the media, so there may be members of the public and the press in attendance at the hearing. Unless they have made a submission and asked to be heard, they will not be invited to speak at the hearing.

## **GETTING READY FOR THE HEARING**

You will be advised of the date and time of the hearing at least 10 working days (2 weeks) beforehand. You can start getting ready well before then, preparing and practising your statement, and gathering your evidence. There is nothing better than preparing well for the hearing for getting your point across on the day. The following are some tips that will help you prepare well for the hearing:

- It is a good idea to prepare a written statement to read out at the hearing. Identifying the key points you want to get across, and back them up in your statement.
- If you do prepare a written statement you should bring at least eight copies of that to the hearing. These will be distributed to the hearings committee and other participants before you speak.
- Practice reading your statement out loud. 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 would answer them.
- If you can, go to a resource consent hearing beforehand to see how it works and get a feel for the process. You do not want surprises on the day.

At least five working days (one week) before the hearing you will get a copy of the council officer's report. This report will present an assessment of the application and a recommendation on whether the officer considers that the resource consent should be granted or declined and it will often include a set of recommended consent conditions. It is important that you read the report before the hearing.

- Think about what is in the report. Is there anything you want to deal with in your statement?
- Would there be any other conditions of consent which you would want to have imposed that could address concerns you may have about the adverse effects of the proposed activity?

## **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.

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

## **Hand-Out Copies of Your Statement**

You should bring eight copies of your statement. These will be handed out to the committee, staff and other parties before you speak.

## **Make It Clear And Easy To Hear**

Read your statement clearly and slowly enough to be understood. Keep your statement simple, make your key points clear, speak clearly, and be 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, so:

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

## **Remember The Hearing Is Neutral**

Councillors on a hearing committee are not there as politicians. They are there as decision-makers who have to weigh up the evidence which they hear during the course of the hearing, so:

- Leave your personal opinions about the council, the councillors, or the applicant outside the door.
- Do not use the hearing as a chance to discuss or argue about other issues. Focus on the issue at hand.

## **Use of an Advocate or Lawyer**

- Use an advocate (a spokesperson) if you are nervous about making a submission, or if a group is making a submission and wants one person to speak for you all. The advocate may 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 of Expert Witnesses**

Members of the hearing committee will not necessarily be experts on the effects of the application that may be of concern to you – they will want to hear good, solid evidence to help them make a decision. You may wish to use expert witnesses to present evidence about technical topics such as noise, traffic effects, soil stability, or water quality. If you are not an expert witness, do not pretend to be one, only expert witnesses can offer opinions on matters that relate to their field of expertise. Instead, focus on what you consider to be facts, and your own recollections and observations.



The applicant commonly uses expert witnesses in support of their application. This means it might make sense for you to use expert witnesses as well depending on what your concerns are.

- Stick with what you know, and use expert witness such as planning consultants, surveyors, engineers, or scientists 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 and make sure they have the correct qualifications and experience to do the job.
- However, bear in mind that expert witnesses are not “hired guns”. They must be able to support their own conclusions and their role is to assist the hearing committee in making its decision.
- Check the costs before you employ an expert witness and explore whether the cost of experts can be shared with other parties. You can get a list of who the other parties are from the council.

### **Providing Evidence Before The Hearing**

Depending on the scale and significance of the hearing, the council may direct the applicant and/or any expert witnesses that have been employed by submitters to provide their statements of evidence to it before the hearing. Providing evidence before the hearing is useful where the application is complex, or where there are likely to be conflicting opinions between experts. The length and associated costs of any hearing can be reduced by narrowing the scope of evidence before the hearing and will enable the hearing committee to be better prepared and to assume a more inquisitorial role during the actual hearing.

### **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 is the best way to prepare. They are advertised in “Newslines”.**

### **THE ORDER OF PROCEEDINGS AT A HEARING**

The hearing committee can direct the order of business at hearing, including the order in which evidence and submissions are presented. Council hearings generally follow the same order.

1. The chairperson usually welcomes everyone. The chairperson will then ask the applicant and council staff to introduce themselves. The chairperson will then run through the list of submitters to see who is present and who wishes to present evidence.
2. The chairperson will instruct everyone on the order of the hearing and also check on whether any participants have any time constraints. These will be accommodated where possible.
3. The applicant will then be asked to present its evidence, which normally includes a description of the activity for which resource consent is being applied for. The applicant might also have other people present who will present evidence in support of their application. The hearing committee may ask questions of anyone presenting evidence.



4. After the applicant has presented its evidence **the submitters (and their advocate or witnesses, if any) present their evidence and answer questions from the hearing committee.** The submitters in support, if any, will usually present first, followed by neutral and submitters in opposition. The hearing committee may ask questions of anyone presenting evidence. You will not be “cross examined” (i.e. asked questions) by the applicant or any other submitters, only the hearing committee may ask questions.
5. After all the submitters have spoken, the council planning officer(s) discusses their report. The planner will also address any planning matters that have arisen through the course of the hearing. Other council staff may also present evidence in their areas of expertise.
6. The applicant then presents a “right of reply” to points raised in the hearing. No new evidence can be introduced during the right of reply.
7. The chairperson will then close the public part of the hearing. The hearing committee will undertake a site visit, and will then deliberate and make its decision. The site visit and deliberations are done with the public excluded. The hearing committee has to release its decision within 15 working days of concluding its deliberations (this may be after the close of the public part of the hearing), although this timeframe can be extended under certain circumstances, such as further information being requested.
8. The council writes to you to tell you what the hearing committee’s decision is. If you disagree with the hearing committee’s decision (including conditions of consent if granted), you have the right to appeal all or part of the decision to the Environment Court. The letter which you receive with the decision outlines the appeal process.

## **APPEAL TO THE ENVIRONMENT COURT**

Get professional advice if you are thinking about appealing the decision. A lawyer, planning consultant or someone with similar professional expertise should be able to advise you on the likely success of any appeal. Appeals are often complex and expensive and need to be well thought out before being lodged with the Court. 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. This avenue can result in cost 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 resource consent hearing and you have to following some rules as well.

### **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 is 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 Māori, but you should ask for it when you first lodge your submission with the council. Contact the Council's hearing organiser if you wish to present in Te Reo or 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.



## Can I Ask Questions?

In general, you cannot ask questions of other parties at the hearing. However, often the Chair will allow “questions of clarification”. You must seek leave from the Chair to ask that something be clarified.

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

You can suggest questions for the hearing committee to ask, but the committee is not obliged 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. 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?

No. No one can be cross-examined at a resource consent hearing. Cross-examination means being asked questions by persons representing other parties. Submitters and other witnesses might be asked to take an oath, but this does not usually happen.

## What Will It Cost Me?

Submitters have to pay for their own costs, such as travel to and from the hearing, time off work, and lawyers’ and professionals’ fees. You do not have to pay for anything else. Applicants will have to meet the actual and reasonable costs associated with holding the hearing.

**A resource consent hearing allows the applicant and members of the public 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 process, the committee, and all participants.**
- **Do not grandstand, or get into a debate.**

This information has been adapted from Ministry for the Environment’s “An Everyday Guide to the RMA – Series 3.3” with the Ministry’s permission to suit resource consent hearings by the Tasman District Council.

Other publications available from the Ministry for the Environment in this series are:

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| 1.1 | Getting in on the Act                      | 4.1 | The Designation Process                               |
| 1.2 | Resolving Resource Management Act Concerns | 5.1 | Making a Submission on a Proposed Plan or Plan Change |
| 2.1 | Applying for a Resource Consent            | 5.2 | Appearing at a Council Plan or Plan Change Hearing    |
| 2.2 | Consultation for Resource Consent          | 6.1 | Your Guide to the Environment Court                   |
| 3.1 | Your Rights as an “Affected Person”        | 6.2 | You, Mediation and the Environment Court              |
| 3.2 | Making a Submission on Resource Consent    | 6.3 | Awarding Costs by the Environment Court               |
| 3.3 | Appearing at a Resource Consent Hearing    |     |   |

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