

2020

# Plan Components and Consent Support

The Use of Commissioners



## The use of Commissioners

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This guidance has been updated to include changes to the RMA as a result of the Resource Management Amendment Act 2020 (RMAA20) which was enacted on 30 June 2020. For more information about the amendments refer to the RMAA20 Fact Sheets available on the [Ministry's website](#).

Commissioners are delegated responsibility for carrying out statutory hearing and decision-making duties on a council's behalf or as an independent adviser to the council in the making of those statutory decisions. It is vital that commissioners provide sound advice and /or make sound decisions without any conflicts of interest that could open the path for challenges. This guidance note aims to provide best practice guidance to assist councils in appointing commissioners and developing a clear policy for using commissioners as part of the resource consent, plan making, plan change and notice of requirement processes.

This guidance note provides an:

- introduction into the role of a commissioner
- overview of the use of independent commissioners and elected member commissioners
- outline of the skills required of commissioners.

Click on the graphic below to learn more about the use of Commissioners.

## Guidance note

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## **What is a Commissioner?**

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A commissioner is a person appointed by a council to carry out statutory hearing and decision-making duties on the council's behalf, or to serve as an independent adviser to the council in the making of those statutory decisions.

Commissioners may be generally classified as:

- elected member commissioners – who are appointed from within the members of a council
- independent commissioners – who are not a member of the council i.e. appointed from outside the elected members or staff of a council.

Section 100A and s 357AB(2) of the RMA makes a distinction between elected members and non-elected members, setting out that elected members of the council cannot be independent commissioners.

Section 100A(4) requires councils to delegate its functions, duties and powers to hear and decide on an application to one or more hearing commissioners who are not members of the council when requested by an applicant, submitter or both. The intent is that this would be an exclusive delegation to independent commissioners only (i.e. not a mixed panel also containing elected members or staff of council).

Elected member commissioners may either be appointed to act alone, or with other commissioners or elected members of the council (councillors and community board members).

A council can appoint anyone to be an independent commissioner, but typically those appointed will have relevant skills and experience for the issue being decided (such as in planning, law, surveying, engineering or science). They may also be former councillors who are appointed for their chairing or hearing experience and expertise.

## **What decisions can a commissioner make?**

Section 34A of the Resource Management Act 1991 (RMA) specifies the functions and powers that can be delegated to council employees or other persons such as commissioners. This section leaves the potential powers of commissioners open, referring instead to those powers and functions not able to be delegated.

Commissioners cannot:

- approve a proposed policy statement or plan; or
- delegate any powers or functions delegated to them.

These powers are given to a council only.

Commissioners can be delegated powers in respect of:

- making decisions on proposed policy statements, proposed plans, variations or plan changes (other than approval)
- making decisions on resource consent applications and recommendations on notices of requirement
- making decisions on the notification or non-notification of resource consents
- making decisions in regard to the service of an application



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- making decisions on plan changes or variations and on submissions to plan changes (other than declaring a plan change operative)
- reviewing resource consent conditions
- providing advice on technical or procedural matters in assisting councils to make decisions on particular applications.

Commissioners are able to have any of the powers delegated to them that are delegated to council staff. The following list outlines which delegations can be held by council staff.

RMA	Summary of function delegated
Section 10	Power to determine that existing use rights apply to a proposal
Section 36AAA	Require additional charges
Section 36AAB(1)	Remission of charges on application
Section 36AA	Discount on an administrative charge
Section 37	Power to waive or extend time periods
Section 38	Authorisation of enforcement officers
Section 87CA	Decisions in respect of direct referral
Section 88	Power to determine on initial receipt of an application, the adequacy of an application and whether or not it should be accepted for further processing as a complete and valid application
Section 91	Deferral of application pending additional applications
Section 92	Request further information
Section 95A	Power to determine whether to publicly notify an application for resource consent.
Section 95B	Power to determine whether to limited notify an application.
Section 95C	Notification of consent application after request for further information or report.



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Section 95D	Power to decide if adverse effects are more than minor
Section 95E	Power to decide who is an affected person
Section 95E(3)(b)	Power to decide the circumstances when it will be unreasonable to seek written approval of affected persons
Section 98	To provide applicants for resource consents with a list of submissions received
Section 99	Power to initiate pre-hearing meetings
Section 100	Power to determine that a formal hearing is not needed
Section 101	Power to fix hearing dates
Section 102	Power to make a decision to establish a joint hearing provided that prior consultation takes place with the chairperson
Section 103	Power to decide and arrange the holding of combined hearings where two or more applications are made to the council
Section 104 Section 105 Section 107 Section 108	To make decisions on applications for resource consents, including determining consent conditions.
Section 109	Power to decide whether any work the subject of a bond or covenant is completed satisfactorily
Section 113 Section 114	To serve on parties, copies of decisions on applications for resource consents and arrange public notification of such decisions where appropriate
Section 125	Power to extend the period in which a resource consent lapses
Section 126	Power to cancel un-exercised consents
Section 127 (1)	Power to change or cancel a consent condition



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Section 127 (3)	Power to decide the circumstances when it will be unreasonable to seek written approval of other persons to the variation or cancellation of conditions
Section 128-132	Power to review consent conditions
Section 139	Power to issue certificates of compliance
Section 221	Power to issue a consent notice
Section 222	Power to issue a completion certificate

**Guidance on the Use of Independent Commissioners**

**Circumstances when an independent commissioner must be used**

Decisions on notified resource consents

Section 100A allows an applicant, and/or a submitter to a notified resource consent application, to request that the council appoints at least one independent commissioner to hear and decide on the application. This also applies to notified notices of requirement for a designation and heritage orders but excludes applications for restricted coastal activities.

The request for an independent commissioner must be made in writing any time up to five working days after submissions close.

If such a request is received, then the council must delegate its functions, powers and duties to hear and decide the application to one or more independent commissioners. The council has the discretion to decide on the number of commissioners appointed. This will largely depend on the complexity of the application and the required expertise.

Councils also have the discretion to decide on who they employ as an independent commissioner, provided they meet the accreditation requirements of s39B of the RMA and are not a member (elected representative or staff) of the council. The intent of s100A is that the council delegation would be exclusive to independent commissioners.

Parties who request a commissioner have no right of objection to another party’s request for a commissioner or to the council’s choice of commissioner.

Objections to decision of council officer on resource consent

Section 357AB allows an applicant who is objecting to a decision by a council officer on a resource consent application (or applications under s127, s128 or s221) to request that their objection be heard by an independent commissioner.

The objection, along with the request for an independent commissioner must be made in writing, no later than 15 working days after the decision on the application is issued. If such a request is received, then the council must delegate its functions, powers and duties to consider and decide on the objection to one or more commissioners appointed



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(who are not members of the council and must be accredited (under s39B) unless there are special circumstances).

It should be noted that s357CA enables commissioners to call for further information or commission a report on any matter raised in the objection if that will help them make a decision on the objection.

Costs of using an independent commissioner falls on the person making the objection (the applicant).

### **Other circumstances where an independent commissioner may be used**

The decision to use elected member commissioners or independent commissioners (or a combination) will often involve the following considerations:

- perceived or actual conflicts of interest or perceptions of bias
- the need for specialist expertise not available within a council in cases where issues surrounding an application are complex or of a highly technical nature
- whether the application has substantive implications for the policy of a council such that elected representative input may be considered necessary or desirable
- the likely expense of using independent commissioners compared to the scale of the issue (particularly where an independent commissioner would have to be brought in from outside the district or region)
- the availability of independent commissioners at the time a hearing is required
- the willingness of elected members to delegate decision-making powers and functions to independent commissioners, when not already requested by the applicant and/or submitter(s) under s100A.

While consideration must be given to all these factors, it is generally accepted to be good practice to use independent commissioners in place of elected member commissioners when:

- the council, or an individual elected representative, may otherwise be perceived to have an actual or perceived conflict of interest (refer to [Guidance for members of local authorities about the local authorities \(Members' Interests\) Act 1968](#))
- determining objections under s357 relating to council charges
- matters are outside the technical knowledge or experience of elected members or the council's own staff
- one or more committee members may have, or may be perceived to have, a closed mind on the proposal (such as when publicly stating opinions on the merits of a proposal in the media or at public meetings before it is heard)
- combined or joint hearings under s102 where a neutral chairperson or adviser is considered desirable.

Some councils also employ independent commissioners to make decisions on applications that are politically contentious. This removes the political pressures that may otherwise be placed on councillors at key times (such as in the lead-up to election).

Independent commissioners may also be employed to:

- assist council in carrying out their duties during times when councillors are not available due to conflicting meeting times, or heavy workloads (such as during annual plan hearings)



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- to assist councils following local body elections, when there has been a considerable turnover of councillors, and hearing committees are perhaps lacking in skills and expertise, or cannot otherwise field a sufficient proportion of accredited hearing panel members hear applications, plan changes or carry out other functions of councillors immediately after local authority elections when committees who may normally hear resource consent applications and plan changes have yet to be appointed
- to cover lengthy hearings which councillors would be unable to attend on a continuous basis due to business, financial, family or other limitations.

### Use of Māori commissioners

#### **Plan or Policy Statement Hearings (Standard Planning Process – Part 1 Schedule 1)**

Section 34A(1A) requires councils when appointing commissioners to conduct hearings under Schedule 1, to consult iwi authorities about whether it is appropriate to appoint a commissioner who understands tikanga Māori and the perspectives of local iwi or hapū. If the council considers it appropriate, it must appoint at least one commissioner who understands these matters, in consultation with the relevant iwi authorities.

#### **Plan or Policy Statement (Freshwater Planning Process)**

Freshwater hearing panels are convened by the Chief Freshwater Commissioner to hear and make recommendations on freshwater planning instruments. Generally, each freshwater hearing panel must have 5 members including one member nominated by local tangata whenua (Schedule 1, Part 4, clause 59). There is scope for a greater or lesser number of members to be appointed although panels cannot have fewer than three members. When convening a freshwater hearing panel, the Chief Freshwater Commissioner must have regard to the collective knowledge and expertise of the members including in relation to tikanga Māori and mātauranga Māori. The Chief Freshwater Commissioner must convene each panel in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahono a Rohe, or joint management agreement.

#### **Plan or Policy Statement Hearings (Streamlined Planning Process)**

If the Minister directs a hearing, the relevant planning process requirements under clause 77(5)(c) may apply, which include requirements for hearing panels which mirror those set out in Section 34A(1A) (see above re: Standard Planning Process). Regard must be had to any Mana Whakahono a Rohe (iwi participation arrangement) or iwi participation legislation, or treaty settlement obligation, and any process must be consistent with these obligations.

#### **Resource consent applications**

Where formal relationships and mechanisms between local authorities and iwi, or between the Crown and iwi, confer particular resource management functions and responsibilities on iwi, these must be adhered to. For example, Mana Whakahono a Rohe – iwi participation arrangements, memoranda of understanding, co-management agreements.

There are circumstances when Māori commissioners should be considered, such as for applications involving:

- any water-based issue (i.e. involving rivers, lakes, wetlands, groundwater, estuaries, harbours and coasts) such as:
  - wastewater discharges to waterbodies
  - taking of water





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- inter-catchment water diversions
- large scale construction in waterways and the coastal marine area
- landfill developments
- use of geothermal resources
- developments near taiāpure and mātaītai
- developments that may impact on iconic waterbodies (e.g. Taupō-nui-a-Tia (Lake Taupo), Waikato River, Whanganui River and Te Waihora (Lake Ellesmere))
- proposals that are likely to affect marae, papakāinga, kōhanga reo, kura kaupapa Māori or other Māori institutions.
- proposals that may affect urupā (burial grounds), wāhi tapu (sacred sites), wāhi tupuna (ancestral sites) that are documented and/or known only to Māori (sometimes known as 'silent files'),
- any use or development that may affect mahinga kai, (culturally significant resources used in medicine, weaving, carving, art, ornamentation or other customary usages)
- activities or issues likely to affect Māori ownership or management of resources including Māori land, reserves, statutory acknowledgments, mataītai and taiāpure.
- development in the vicinity of iconic natural features such as maunga and awa.
- proposals associated with specific activities or issues that are identified in iwi management plans.
- proposals based on Māori values, customary usages, practices and beliefs, for example:
  - facilities associated with marae-based education and training in Māori language, arts and culture.
  - wānanga (e.g. Te Wānanga o Aotearoa, Te Wānanga o Raukawa, Te Whare Wānanga o Awanuiarangi)
  - use of land/sites and activities on the surface of water associated with the expression of Māori culture, such as:
    - performing arts (e.g. kapa haka)
    - sports events (e.g. waka ama)
    - festivals, exhibitions and celebrations (e.g. Te Hui Ahurei a Tuhoe, Parihaka Peace Festival, Paihia Matariki Festival)
    - tourism developments for example:
      - restored/model Māori villages
      - Te Wairoa buried village, Whakarewarewa thermal village, Tamaki Māori Village, Mitai Māori Village.
      - Māori art and craft centres
      - New Zealand Arts and Crafts Institute, art galleries
      - operations or venues offering Māori cultural experiences
      - Te Puia heritage park, Whakarewarewa geothermal valley, Whanganui River waka tours, marae-based tourism
- special reserves for culturally significant resources, for example:



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- tōtara trees - carving, construction, medicinal
- kahikatea (white pine) – construction
- kōwhai tree - medicinal, construction
- harakeke (flax) - textiles, construction, medicinal
- tī kōuka (cabbage tree) - textiles, medicinal
- pīngao (sand sedge) - textiles, ornamentation
- remnant karaka groves – food
- hīnau trees – food
- kawakawa (pepper tree) – medicinal
- kōkōwai (red orche) - ornamentation, construction
- mānuka (tea tree) - tools, construction, medicinal
- pounamu (greenstone) - tools, ornaments
- raupō (bulrush) - construction, textiles
- tūhua (argillite) – tools
- matā (obsidian) – tools
- tītī (sooty shearwater or mutton bird) – food
- kererū (wood pigeon) – food
- tuna (freshwater eel) – food
- korokoro (lamprey) – food
- tohorā (whales) - tools, food, ornamentation

*Note: Pounamu resources are owned and controlled by Ngāi Tahu.*

- Proposals in communities that have a high Māori population and that identify strongly with Māori cultural and spiritual values e.g. papakainga and marae-based communities, and other special communities and locations) including:
  - Rātana (Rātana Church-based township)
  - Ruatahuna (Ngāi Tūhoe/Ringatū)
  - Parihaka (Whiti & Tohu movement)
  - Ngāruawāhia (Kīngitanga)
  - Whakarewarewa (traditional & natural heritage)
  - Waitangi (Treaty of Waitangi)
- Proposals likely to be of significant interest to, and attract submissions from, Māori.

### **Good practice in the use of independent commissioners**

- For the sake of transparency and consistency, councils should have a clear policy or set of guidelines on the use of independent commissioners which clearly states what circumstances are considered to warrant the use of a commissioner, what powers are to be delegated, and what steps are to be followed in the appointment of a commissioner. Such a policy or set of guidelines may form part of a council's delegations manual or policy or may constitute a separate policy



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- Councils should have a list of suitable persons from which they can appoint commissioners as back-up for occasions when commissioners who may otherwise have been appointed are not available. Councils should consider diversity when making appointments
- The skills and experience of independent commissioners employed should match the nature, scale and technical complexity of the issues on which a decision is being made
- The Ministry for the Environment maintains a [list of independent commissioners](#) and councillors (including their fields of expertise and areas of practice) who have achieved certification under the [Making Good Decisions programme](#).
- A check of the past experiences of candidates for independent commissioner work can be used to ensure that they have the capability to undertake the task for which they are being considered
- Ensure the accreditation requirements of the RMA can be met
- Where independent commissioner(s) are appointed for a hearing, the appointing council should confirm the appointment in writing. Such documentation should specify the powers being delegated, whether the independent commissioner(s) will be sitting alone or as part of a panel (and if part of a panel, their role on it) and details of the anticipated time, date and location of the hearing
- Where a particular commissioner is being used by a council for the first time, the council may outline the style and detail to be contained in the written decision report and may supplement any such outline with an example that demonstrates the style desired
- Ensure that all material which a commissioner will need to make a decision on, is given to the commissioner as far ahead of the hearing (or the task they are to perform) as is possible. Such information should include a copy of the application, the council officer's report, and the plan(s) under which a decision on the application will be made. It is also helpful to provide an indexed copy of any submissions made to the application, and a clear map of the site to which the application relates
- Where possible, a room separate from where the hearing is to be held, should be made available to commissioners for use in breaks during the hearing. This allows deliberation, avoids unnecessary distractions for the commissioner(s), and removes the ability of a party to try and approach or influence the commissioner(s) during or after the hearing
- Check with the commissioner(s) if a site visit before or after the hearing is preferred, and if they want staff to assist them in pointing out the relevant features/issues on the site. (Note: some councils ensure that the person accompanying the commissioner is not the reporting officer; this eliminates any possible perception that the reporting officer may take the opportunity to influence the commissioner into favouring the council's recommendations).

### **Appointing independent commissioners: standing orders, codes of conduct and delegated authority**

Elected members or independents appointed as commissioners are not subject to standing orders or other formal committee procedures (because they are not a committee of the council). In any event, the hearing should be conducted without undue formality. From the point of view of applicants or submitters, there should be very little difference between hearings conducted by commissioners and those held by councillors.



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Once the council has settled on the appointment of a commissioner, panel of commissioners or committee, it must ensure that sufficient delegations are given to these people to undertake the hearing and make decisions or recommendations. Appointment and delegation usually occur at the same time, but they are separate steps, and should both be documented.

Councils should ensure that the appointment and delegation of commissioners clearly sets out:

- the identity of the commissioners
- the identity of the chair, or whether the commissioners may elect a chair
- that the commissioners have the power, under s34A of the RMA, to both hear and make decisions on the relevant application and/or submissions or, where relevant, to hear and make recommendations
- whether the commissioners can continue to hear and make a decision if one or more of the commissioners is unable to continue with the hearing
- where necessary, that commissioners may make decisions in relation to preliminary consent processes, such as extensions of time limits, decisions on pre-hearing meetings, etc (in many cases these will not be relevant, as these steps will occur before the appointment of the commissioners)
- that the commissioners have been delegated the powers to exercise any additional power or function under ss41 to 42A of the RMA
- whether the commissioners are expected to deliberate in public or in private.

In delegating its procedural powers at the hearing, the council may wish to consider whether decisions on procedure should be delegated to the chair alone, rather than collectively to the panel of commissioners. Especially where an experienced chair has been appointed, it may be administratively convenient to leave decisions on hearing procedure entirely to the chair; this will also enable the other panel members to focus on the merits of the application.

Independent commissioners are not technically operating under a council's code of conduct. However, they should bear in mind that they represent the public face of the council in undertaking its RMA function. Commissioners must also be aware that they may only act in accordance with the terms of their delegation. Councils should ensure they clearly set out any procedural expectations for hearings conducted by commissioners at the time the commissioners are appointed.

### **Fulfilling the accreditation requirements of the RMA**

There are accreditation requirements that apply when a council gives authority (including under s34A) to one person or a group of persons to conduct a hearing on:

- an application for a resource consent that is notified
- a notice of requirement given under s168 or s189
- a request under clause 21(1) of Schedule 1 for a change to be made to a plan (private plan change).
- a review of a resource consent
- application to change or cancel consent conditions
- proposed policy statements and plans
- any hearing of an objection under section 357C of the RMA.

These accreditation requirements are set out in s39B. In the circumstances referred to above, the council must ensure that:

- a person is accredited (if it gives authority to one person)
- everyone in the group, including the chairperson, are accredited; unless there are exceptional circumstances that don't provide the time or opportunity to ensure that everyone is accredited but the chairperson must be accredited (if it gives authority to a group of persons that has a chairperson)
- everyone in the group is accredited; unless there are exceptional circumstances that don't provide the time and opportunity to ensure that everyone is accredited, in which case over half of all the persons must be accredited (if it wants to give authority to a group of persons that doesn't have a chairperson).

The Minister has approved the successful completion of the Making Good Decisions programme, as the qualification for accreditation. The Minister announced his decision by way of a notice in the [New Zealand Gazette](#) in accordance with s39A. All alternate, temporary, current, retired and former judges of the Environment Court, High Court, Court of Appeal and Supreme Court are to be treated as having completed the programme. Automatic accreditation is also given to Environment Commissioners and Deputy Environment Commissioners, with five years or more experience in that capacity. To retain accreditation once retired from the Environment Commissioner role, recertification is required within three years of ceasing service and every five years thereafter, in line with recertification requirements for all other certificate holders.

Councils need to ensure that:

- the people they wish to appoint as sole commissioners or chairpersons hold a current certificate under the Making Good Decisions programme
- independent commissioners they wish to appoint as panel members hold a current certificate

unless exceptional circumstances exist that do not provide the time and opportunity to ensure that everyone is accredited.

**Additional points for councils who regularly use independent commissioners**

- Where a council has many hearings that require the use of an independent commissioner over the course of a year, a pool of commissioners should be used; and the people appointed to hearings should be rotated to avoid perceptions of favouritism, or compromised commissioner independence



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- Any pool or register of commissioners should have sufficient variety of knowledge and experience to cover the typical range of hearing topics which a council may be expected to encounter during the course of a year
- Any policy or guidelines used to guide a council in the employment of commissioners should allow for circumstances where none of the registered individuals are available, or a particular body of knowledge and experience is required but not available from those on the register.

The Ministry maintains a [list of independent commissioners](#) and others (including their fields of expertise and areas of practice) who have achieved certification under the Making Good Decisions programme.

### **Use of Elected Members or Community Board Members as Commissioners**

A council may appoint elected members or community board members, from within that council or from another council, to be commissioners. Appointing councillors as commissioners, may be useful where a resource consent application requires a joint hearing (where councils combine to hear an application), or where a consent hearing is likely to span a local authority election and continuity of service on the hearing panel is required.

However, if an independent commissioner is requested under section 100A or 357AB, the council must appoint at least one commissioner who is not a member (councillor or staff) of the council. The intent of s100A is that the council delegation would be exclusive to independent commissioners.

### **Best practice in appointing elected members as commissioners:**

Councillors will usually decide who among them will be appointed to commissioner roles. In the interests of good practice, they should be guided by the following principles (whether or not they form part of a council policy or set of guidelines):

- elected members or councillors should have training and experience as chairs or hearing panel members or both, and be able to demonstrate fulfilling the accreditation requirements of the RMA by holding a current certificate under the Making Good Decisions programme
- councillors nominated to be appointed as elected member commissioners should have no actual or perceived conflict of interest (refer to [Guidance for members of local authorities about the local authorities \(Members' Interests\) Act 1968](#))
- where councillors or other elected members are regularly called upon to act as commissioners, they need to be made fully aware of the potential workload involved and be available as required
- any appointment of elected member commissioners and delegation of functions made under s34A of the RMA should be formally recorded as a resolution of the council. This appointment may be recorded on documentation related to a hearing (such as correspondence and order papers) to ensure that no confusion exists in regard to the authority of those persons to act as commissioners.

## How many Commissioners should be used?

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There are generally no legal or statutory requirements as to how many commissioners should make decisions (other than the requirement to appoint at least one independent commissioner if requested under section 100A or 357AB). (The exception is when a freshwater hearing panel hears and makes recommendations on a freshwater planning instrument. In this case the Chief Freshwater Commissioner is responsible for convening the panels and the composition of the panel is prescribed in the RMA). Principles contained in case law, common practice, and overseas examples do, however, provide some guidance.

The number of commissioners should match the scale of the decision that needs to be made, its complexity, and the experience and expertise of the commissioners. Any policies and guidelines drafted to guide councils in using commissioners should reflect this principle.

- Single-issue decisions of low complexity will generally require only one commissioner
- Complex decisions, for example applications dealing with technical arguments on many different issues, may require two or more commissioners. One commissioner will often be employed to take into account the overall considerations of the application and guide the conduct of proceedings; the other(s) may consider the more detailed technical evidence according to their knowledge and experience. There should be sufficient expertise in the panel to ensure full understanding of the relevant evidence and information presented
- Applications and plan changes with large numbers of submissions may warrant the use of more than one commissioner: the issues covered by submitters may be varied and require a range and depth of technical knowledge which no single commissioner can be expected to have.

Some councils use an odd number of commissioners in hearings to avoid 'stalemate' situations. With an even number of commissioners, councils may want to identify which commissioner's view will prevail or have a casting vote (usually the chairperson or principal commissioner) in the appointment/delegation of powers to commissioners. For most hearings, no more than three commissioners should be needed.

## The skills a commissioner requires

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All commissioners should have a set of core competencies and skills that enable them to understand the application or issue before them, conduct hearings in an appropriate manner, and make sound decisions.

Core competencies include:

- correctly identifying the nature of issues arising during a hearing in terms of the RMA and relevant planning documents
- recognising common decision-making biases and applying cognitive strategies to minimise their impact
- demonstrating impartiality and integrity
- systematically and appropriately testing and questioning the evidence and decisions of others
- demonstrating commitment to appropriately and fairly assessing and





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weighing evidence

- making balanced contributions during deliberation and obtaining and clarifying relevant views from other panel members to increase the total knowledge available
- using appropriate decision-making tools
- formulating a reasoned decision independently of others.

Commissioners should have the following expertise:

- a good knowledge of the RMA, and the decision-making and hearings procedures contained within it
- knowledge of functions and processes under the Local Government Act and the Local Government Official Information and Meetings Act 1987
- the ability to listen effectively, distilling the key arguments and facts from the information presented
- an awareness and understanding of the principles of natural justice and a sense of fair play
- the ability to maintain objective neutrality (not jump to conclusions or predetermine an outcome)
- a general understanding of the principles of the Treaty of Waitangi, their relevance in legislation, and whether and how they may be applicable to the decision(s) to be made.

Other skills or qualities may be required to meet the circumstances where general knowledge and skills alone will not suffice. These other qualities or skills could include:

- recognised specialist qualifications, expertise and/or experience in a particular field (such as resource management law, planning, surveying, engineering, ecology, architecture, urban design or science)
- understanding of Māori language, tikanga, history and cultural values (such as in cases where Māori heritage, tāonga, or ancestral relationships could be affected). On occasion an appreciation of potential conflicting or competing interests between local hapū or iwi may also be required.
- an understanding of other cultures, in cases where issues in relation to those cultures have been raised.

A commissioner who chairs a hearing, or sits alone, can be expected to have the following additional competencies:

- jointly considering and applying RMA, relevant legislation and planning documents to a wide variety of complex contexts
- demonstrating awareness of the powers of a panel and chair and being able to apply these powers flexibly, ethically, fairly and appropriately
- chairing hearings confidently, dealing appropriately with complex and unexpected issues, plus effectively leading and managing other panel members
- effectively leading and managing processes leading up to the hearing
- effectively leading and managing the post-hearing processes
- demonstrating a commitment to managing and developing the performance of panel members and continuous self-improvement.

Chairs with this set of competencies can be expected to:





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- conduct the hearing in a way that enables all parties who wish to be heard a fair hearing without time wastage or undue coverage of irrelevant or inappropriate issues and evidence
- manage conflict and unacceptable behaviours associated with unreasonable challenges
- communicate succinctly and accurately (orally and in written form), explaining the reasoning for any decisions made, including decisions regarding the relevance (or otherwise) of evidence being presented
- fully understand the processes involved in drafting decisions and be able to write decisions without assistance.

Some councils make staff available to assist commissioners in the interpretation of their plans. Where an adviser drawn from council staff is not available – or not wanted – it is important that the commissioner is familiar with both the content and structure of those planning documents and can interpret them accurately.

All the skills referred to above are covered by the Making Good Decisions programme.

**The Making Good Decisions training, assessment and certification programme for RMA decision-makers**

The Making Good Decisions programme helps councillors, community board members, and independent commissioners make better decisions under the RMA. It provides RMA decision-makers with the skills they need to run fair and effective resource consent, plan change and designation hearings, and to make informed decisions.

The programme was developed by the Ministry for the Environment and Local Government New Zealand, in consultation with stakeholders and professional bodies, including the New Zealand Planning Institute.

It is delivered by the WSP Environment Training Centre, which employs an experienced team of presenters, facilitators and tutors. For more information on the structure and content of the programme, go to the [WSP Environment Training Centre website](#).

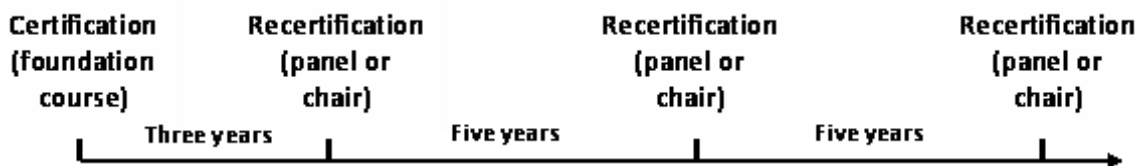
Successful participants are issued with a certificate that is valid for three years, confirming they have successfully achieved the programme’s competencies and are competent decision-makers.

There is a re-certification process for those who wish to have their certificates recertified on expiry. Anyone who initially passes the course is required to undertake re-certification three years from their initial certification and every five years after that.

There are two options for re-certification:

1. Training for those who want to continue as hearings panel members
2. Training for those who are experienced chairs or are aspiring chairs.

The diagram below outlines the re-certification requirements:



Successful completion of the programme is recognised as a qualification for fulfilling the accreditation requirements of the RMA.



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Certification brings with it both opportunities and obligations. Certificate holders are obliged to attend update seminars, and have their understanding re-assessed, should they wish to have their certificates reissued on expiry. See the [Making Good Decisions area on the Ministry for the Environment's website](#) for more information on the impact of the programme and for lists of certificate holders.

### **The costs of commissioners**

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Where a council employs independent commissioners, determining who is responsible for the costs depends on the circumstances of the commissioner's appointment.

Where a council decides to use independent commissioner(s), then the costs are passed onto the applicant in the standard way under s36.

However, if independent commissioners are requested under s100A then the following applies (s36(1)):

- If the applicant makes the request (regardless of whether a submitter also makes a request) the applicant is responsible for all the costs of the hearing and decision
- If submitter(s) make the request (and the applicant does not), then the submitter(s) who have made the request and the applicant are responsible for portions of the costs of the hearing and decision. The applicant must pay for the costs of the hearing and decision as if the request for independent commissioners had not been made (i.e. the council was hearing and deciding the application in the normal way). The submitter(s) pays for any additional costs consequent of the appointment of the independent commissioner. These additional costs are split in equal shares if there is more than one submitter who makes the request for a commissioner.

If an independent commissioner is requested under s357AB (objection to a decision of a council officer on a resource consent application), the objector/applicant is responsible for all costs relating to the consideration and decision on the objection (s 36(1)(af)).

All charges are to be set as fixed charges under section 36(1).

Councils cannot take a deposit or security to ensure the costs of independent commissioners requested by submitters are met. Councils need to recover costs from submitters through their usual debt recovery means. Therefore, it is important for councils to sort out their financial systems and make their charging regime clear to submitters before confirming the use of independent commissioners.

Councils also have the discretion to waive additional fees and charges where independent commissioners are requested. If they choose not to waive fees or charges, and the hearing has already gone ahead with independent commissioners, then the submitters should be treated like any other debtor.





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