2020

Consent Steps

Notified and Limited Notified Resource Consent Applications

THE RMA QUALITY PLANNING RESOURCE

Notified and limited notified resource consent applications

This guidance has been updated to include the changes made to the consenting provisions of 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 from the Ministry's website.

There are two types of notified resource consent applications:

1. Publicly notified applications - allows any person (other than a trade competitor) to lodge a submission in support and/or opposition, or to indicate a neutral position with respect to an application; and

2. Limited notified applications - notice of the application is served on all persons identified as being adversely affected and allowing only those persons to lodge a submission. However, where affected parties have provided their written approval they are not served notice and cannot lodge a submission.

Section 2AA of the Resource Management Act 1991 (RMA) provides definitions relating to both public and limited notification. Section 2AB sets out requirements for giving public notice of an application. Section 2AC sets out how documents are to be made available to the public.

Guidance Note

To access the guidance note scroll down or click on the link below. Alternatively you can download the complete guidance note.

The process of notification

Notifying Fast-Track applications

To be eligible for the fast track process, the resource consent application must be a district land use application having a controlled activity status (s87AAC), and it must

have an electronic address for service. A notification decision must be made within 10 working days after lodgement.

The new step-by-step process for determining notification;

- precludes public notification of controlled activity applications (s95A(5)(b)(i)), unless special circumstances exist, and
- precludes limited notification of controlled activity applications (s95B(6)(b)),-unless special circumstances exist.
- Note however there is mandatory limited notification in s95B Step 1 if the application affects protected customary rights groups, customary marine title groups in the case of an accommodated activity, or is on or adjacent to or may affect land subject to a statutory acknowledgement, and the person is affected under s95E. For further information relating to this, refer to the guidance note : "To Notify or Not to Notify".

If notified, the application will automatically cease to be a fast track application and will be processed via the notification path that has been determined (ie either limited or publicly notified) and the relevant timeframes that apply to this process. The date of lodgement of the original (fast-track) consent remains the same.

For any fast track applications that the council decides to notify, the council officer needs to decide whether to request any of the information contained in s 88(2)(b). The council officer is not required to request this information but can do so if necessary under s 92(1). It should be noted however, that after a notification decision, the processing clock cannot be stopped awaiting further information requests (s 88C(1)).

Informing the applicant that their application has been notified

If an application is to be notified on either a public or limited notified basis, this must be done within 20 working days of the date the application is first lodged or 10 working days for a fast track application (s95). If the council decides that a fast track application needs to be notified, it ceases to continue to be a processed on a fast track basis.

It is good practice to advise the applicant in advance of the intention to notify the application (unless the applicant requests public notification or the application was lodged on a notified basis). This is important to provide them with an opportunity to modify the proposal or withdraw the application to avoid notification should they wish. Although there is no specific provision in the RMA to stop the processing clock while the applicant modifies their proposal prior to notification, the Council could extend the statutory timeframe for notification (or decision) under s37 (if required) if the applicant agrees to the extension or special circumstances exist.

It is also important to advise the applicant about the consequences under s95C of not providing further information or refusing to provide further information. Section 95C

requires the council to publicly notify a resource consent application if the applicant does not provide further information under ss92(1) and 92(2)(b) before the deadline, or refuses to provide the information.

If notification is to proceed, the applicant should be informed of this in writing, via their electronic address of service (if provided). The following information should be communicated to the applicant:

- the reasons why the application is to be notified (include the notification report or documentation of the decision and reasons)
- the people to be notified and their addresses (if limited notified)
- a copy of the public notice and a copy of the summary (to be placed in the local newspaper)
- the date the application will be notified (the application must be notified within 20 working days of lodgement)
- the closing date for submissions (20th working day after the date of notification (or less for limited notification subject to s 97(4)))
- where submissions will be received
- advice that the applicant will be sent a copy of each submission by each submitter
- the process the applicant can expect from this point onwards
- the timeframes that must be met (for example the latest date that a decision should be issued by in order to meet statutory timeframes)
- the ability of the applicant to place their application on hold under section 91A once notification has commenced
- the ability for the applicant to request direct referral of the application to the Environment Court if publicly notified
- the ability to request a hearing by one or more independent commissioners (s100A)
- advice regarding any additional fees payable for the application to proceed on a notified basis.

Any pamphlets the council has on notification should be included with the letter, to help the applicant better understand the process.

Under s36AAB(2), if the council decides that an application is to be publicly or limited notified, the council does not have to carry out notification until any relevant fee is paid. In these circumstances the clock does not stop but the days are excluded for the purposes of calculating a discount under the Discount Regulations. Please refer to the 'Resource Management (Discount on Administrative Charges) Regulations 2010: Implementation Guidance" on the MfE website for further details.

Who is served notice on a publicly notified application?

When an application is publicly notified under section 95A, of the RMA, the council must notify prescribed persons of the application as required by Regulation 10 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003. This applies to the following types of applications:

- an application for a resource consent (s88)
- an application to change or cancel condition(s) of resource consent (s127)
- a review of a consent conditions (s128)

- an application for a transfer of a water permit or a discharge permit (s136)
- a notice of requirement for a designation or heritage order (s168A and 189A)
- a notice of requirement to alter a designation or heritage order (s181 and s195A
- an application or proposal to vary or cancel an instrument creating an esplanade strip
- a matter of creating an esplanade strip by agreement (s234)

Regulation 10 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 states that the persons to be served notice include:

- every person who the consent authority decides is an affected person under section 95B of the Act in relation to the activity that is the subject of the application or review:
- every person, other than the applicant, who the consent authority knows is an owner or occupier of land to which the application or review relates:
- the regional council or territorial authority for the region or district to which the application or review relates:
- any other iwi authorities, local authorities, persons with a relevant statutory acknowledgement persons, or bodies that the consent authority considers should have notice of the application or review:
- the Minister of Conservation, if the application or review relates to an activity in a coastal marine area or on land that adjoins a coastal marine area:
- the Minister of Fisheries, the Minister of Conservation, and the relevant Fish and Game Council, if an application relates to fish farming (as defined in the Fisheries Act 1996) other than in the coastal marine area:
- Heritage New Zealand Pouhere Taonga, if the application or review—
    - relates to land that is subject to a heritage order or a requirement for a heritage order or that is otherwise identified in the plan or proposed plan as having heritage value; or
    - affects any historic place, historic area, wāhi tūpuna, wahi tapu, or wahi tapu area entered on the New Zealand Heritage List/Rārangi Kōrero under the Heritage New Zealand Pouhere Taonga Act 2014
- a protected customary rights group that, in the opinion of the consent authority, may be adversely affected by the grant of a resource consent or the review of consent conditions:
- a customary marine title group that, in the opinion of the consent authority, may be adversely affected by the grant of a resource consent for an accommodated activity:
- Transpower New Zealand, if the application or review may affect the national grid.

Who is served notice on a limited notified application?

When an application is limited notified under s95B, the council need only serve notice on those persons or groups identified as being adversely affected under ss 95B(2) or (3), 95E, 95F and 95G.

A council cannot consider a person (or group) to be an affected party if they have given their written approval to an application. Accordingly those persons (or groups) are not entitled to be served with notice of the application and therefore cannot lodge a submission on the application.

What to serve on parties that are notified directly

When notifying any persons or groups adversely affected by an application, the notice must contain sufficient information to enable them to understand the general nature of the application and whether it will affect them, without requiring any reference to other information.

There are no prescribed forms for service of notice. Generally, the higher the standard of the information supplied in the notice, the less time council officers will need to spend answering questions about the application and forwarding information to people.

S 352 (service of documents) makes electronic delivery the default method of service (if the person/party has specified an electronic address as an address for service for the matter to which the document relates). If a person has not provided an electronic address or requests a non-electronic method of service, the sender may use any of the alternative methods listed in section 352(1)(b).

If the method of service is not electronic, and the application is relatively short, then it may be appropriate to send a copy of the entire application to those people who are required to be notified. For larger applications a copy of the application form and a site location plan indicating what is proposed and exactly where may be appropriate. The notice should also outline where the full application is available for public viewing if it is not being provided to affected parties.

The public notice

The public notice for a fully notified resource consent application must be published (along with any relevant information) on a freely accessible internet site (which is generally the relevant council website). In addition to this, a short summary of this notice is to be published in at least one newspaper that circulates within the entire area likely to be affected by the proposal to which the notice relates, and it must direct readers to the internet site where the full notice can be viewed.

Refer to s2AB of the RMA for the definition of public notice.

The public notice itself must be in the prescribed form - Form 12 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003 - and include:

- the name of the council who has received the application
- the name of the applicant
- a description of the type of resource consent applied for
- a description of the activity, including the location
- if for a change or cancellation of a resource consent condition: the type and location of the resource consent, the relevant condition and the proposed change
- if for an application for a transfer of a water permit: the site for which the water permit has been granted
- if it is an application to vary or cancel an instrument creating an esplanade strip, a description of the strip and its location and any proposed variation
- a statement that the application includes an assessment of environmental effects (AEE)
- information on where the application and accompanying information may be

inspected or purchased (web address or place)
- the name of the person to contact with any queries and the contact details
- a statement that submissions can be made in writing on a prescribed submission form by any person and sent to the council, from where copies of the appropriate submission form can be obtained (refer to Form 13 or Form 16B if the submission is regarding an application lodged with the Environmental Protection Authority (EPA))
- state the closing date for the receipt of submissions at the council (this must be the 20th working day after the date of the public notice or date where extension of time is granted by council)
- state the address for service for the council and the applicant
- state that a copy of every submission must be served on the applicant as soon as reasonably practicable after serving the submission on the council.

There are a variety of ways to present this information in a public notice. However, it is important to keep in mind the audience is the general public who may not be familiar with the jargon and technicalities of the RMA. Section 2AB(2) requires any public notice on the internet to be worded in such a way that is clear and concise. To help the public interpret and understand the public notice, it is recommended the notice include:

- a brief explanation about why the application was publicly notified.
- a link to where the submission form can be downloaded from
- links to other information on the council website which might assist the public in making submissions (eg, information from the plan) - short, plain and simple text and wording - make it descriptive so people can easily form a visual picture of what is proposed; avoid the overuse of technical jargon and 'legal speak'
- reference the RMA only where necessary and avoid quoting large sections of it
- use of an easily read font: avoid extremely small and hard to read fonts
- the address of the website in bold font.
- It is good practice to allow the applicant and/or their agent to view the public notice prior to it being published

Summary of public notice

A short summary of the online public notice is to be published in at least one newspaper circulated in the entire area affected by the topic of the notice, and needs to refer the reader to the freely available web address where full notice can be viewed. The summary is to be worded in a way that is clear and concise, using plain and simple text and wording and should cover the following information:

- The name of the relevant consent authority
- The name of the applicant
- A clear and concise description of the proposal
- A clear and concise description of the location
- The closing date of submissions (if applicable)
- Weblink to the full public notice.

Site Notice

Regulation 10A of the Resource Management (Forms, Fees and Procedure) Regulations 2003 provides the council with the discretion to affix the summary of the public notice in a conspicuous place within the site or adjacent to the site to which the application

relates. It is good practice to erect a sign displaying the summary of the public notice, especially if the proposed activity takes place in an area with widespread effects or will affect people who are not directly notified.

Suspension of the application by the applicant (sections 91A-91F)

Fully notified and limited notified applications can be placed on suspend by the applicant under s91A any time between notification (under s95) and the close of the hearing (if a hearing is to be held) or between notification and the date that the final decision is issued (if no hearing is held). Non-notified applications can also be suspended at the request of the applicant (s91D).
When a request is received from an applicant (by written or electronic notice), the council must suspend the processing of the application under section 91A or 91D.

The applicant can only request that a notified application be suspended under s 91A if there have been less than 130 working days that the application has already been on hold for (ie for s 91 (awaiting additional consents), s 92(1) (further information), s92(2) (report commissioning), s95E (awaiting written approvals of affected persons), or s99 (referral to mediation). A non-notified application may only be suspended if there have been less than 20 days previously excluded from the time limits for the reasons set out in s88B.

The council must give written or electronic notice (electronic if they have provided an electronic address for service) to the applicant specifying the date on which the suspension started. It is good practice to also state the date at which the suspension will expire in this notice, as is sending a reminder letter or speaking to the applicant towards the end of the suspension period to remind them that the suspension period is about to expire.

The council must resume processing of a suspended application at the applicant's request.

If the application remains suspended for longer than the specified time period (including all other periods when the application was suspended), the council must either return the application to the applicant, or continue to process it. The intent of this deadline is to avoid situations where applications are suspended for long period of time as this can create uncertainty for affected communities and prevent others seeking access to resources.

There are no criteria in the RMA that the council must take into account when deciding whether to return the application. However, some possible considerations include:

- whether there has been any communication from the applicant during the period the application was suspended
- what is known about the reasons the application has been on hold
- whether the applicant has made progress in further developing their application
- whether the applicant is likely to provide adequate information
- whether the applicant appears interested in proceeding with the application or resolving any issues
- whether the costs of processing the application to date have been recovered
- if there are other parties involved in the process, whether negotiations with them are known to be occurring and progressing
- whether the applicant can be contacted

- the level of investment that has been made in the process to date by the applicant, submitters, the council and any other parties
- whether the application is being made to replace a resource consent that will expire. In these circumstances, consider whether sections 124 to 124C apply to the application.

A decision to return the application means that, if the applicant still wants to obtain resource consent, they will need to re-apply and their application will be treated as new.

An alternative option is for the consent authority to extend the timeframe of the suspension period using section 37.

Under 357(3A), applicants may object to an application being returned but they cannot object to the consent authority's decision to continue processing the application.

Further information about how to implement sections 91A to 91C can be found in the Ministry for the Environment's publication: "A guide to the six month process for notified resource consent applications"

The process for making submissions

Sections 96(1) and 96(2) of the RMA provide for any person to make a submission to a council on an application for a resource consent that is publicly notified in accordance with ss95A or 95C, unless they are a trade competitor and are submitting on trade competition grounds (as outlined in s308B).

If an application is limited notified in accordance with s95B, only those persons who were served with notice of the application may make a submission under ss96(3) and 96(4), unless they are a trade competitor and are submitting on trade competition grounds (as outlined in s308B).

A submission can be in support or in opposition to the application, or neutral in its stance. It is desirable however that the submission specify clearly whether the submitter wants the application declined, approved, or subject to identified conditions.

The submission may be written or electronic and must be in the prescribed form, Form 13 (or Form 16B if the submission is regarding an application being processed by the EPA). Form 13 requires the following information:

- the name of the council the submission is lodged with
- the name and contact details and electronic address for service of the submitter
- the application to which the submission applies
- a brief description of the type of application applied for, the proposed activity and the location of it
- the specific parts of the application to which the submission relates
- whether the submitter supports, opposes or is neutral to specific parts of the application and/or the entire application
- the reasons for making the submission
- the decision the submitter wishes the council to make, including any amendments, and the general nature of any conditions that the submitter believes should be imposed if the consent is granted
- whether the submitter wishes to speak to the submission at the hearing
- whether the submitter wishes to consider presenting a joint case with others making a

similar submission
- whether the submitter requests pursuant to s100A that the hearing be heard by one or more hearings commissioners who are not members of the local authority.
- a note to submitters stating that if they request the use of hearings commissioners under s100A they may be liable to meet or contribute to the costs of the hearings commissioner or commissioners.
- a note to submitters outlining the submission strike-out provisions (s41D).

The closing date for making submissions must be specified in the public notice. Section 97 of the RMA prescribes that submissions will close on the 20th working day after public or limited notification of the application. This period may only be extended by using ss37 and 37A if there are special circumstances, or the applicant agrees.

Closing the limited notification period early

Under s97 councils may choose to close the submission period for limited notified applications early if all affected persons have provided the consent authority with a submission, written approval, or notice that they will not be making a submission.

If the council decides to close the submission period early, it must do so on the last day that it receives the final submission, written approval, or notice that a submission will not be made from the final affected persons.

If the submission period is closed early, the time period after which a discount is payable under the Discount Regulations remains 100 working days from lodgement. This means that by closing the submission period early and beginning the hearing sooner, the consent authority reduces the likelihood that it will be required to pay a discount if the hearing or the preparation of the decision take longer than anticipated.

Common problems with submissions

Below are common problems experienced with submissions and some suggested solutions.

Problem	Solution
Late submission	Sections 37(1)(b) allows a consent authority to waive any failure to comply with a time limit provided that it takes into account: The interests of any person who, in its opinion may be directly affected by the extension or waiver; and the interests of the community in achieving adequate assessment of the effects of a proposal, and its duty under section 21 to avoid unreasonable delay. Using a set of criteria can assist in determining whether a late submission is able to be accepted or not in a consistent way. However, late submissions still need to be addressed on a case-by-case basis.
Incomplete information in the submission. For example, the submitter has not provided: • address for service • any reasons • any conditions or decision sought	It is very important that submitters understand the importance of fully completing their submission. This can be helped by developing clear, user-friendly submission forms and supporting information and guidance. It is good practice to review submissions as they are received. Where a submission is incomplete, contact the submitter to explain why it is thought to be incomplete and invite the submitter to complete it. This is particularly important if the missing information relate to reasons, decision sought and conditions. If the missing information is not provided, submitters need to understand that their submission may not be fully understood or may be disallowed.
Submitter has not indicated if they want to be heard or not	It is good practice for a council officer to phone submitters and clarify whether or not they want to be heard. They need to understand that by not ticking the "I wish to be heard" box, they will not be notified of the date, time and place of any hearing (s101(3)(b)), nor will they be able to participate in a hearing. Conversely, if submitters initially indicate they wish to be heard and then decide to forfeit this right, it is recommended the withdrawal be received in writing and that these submitters be informed of the implications as stated above.
Submission has not been served on the applicant	It is good practice for a council officer to phone submitters and advise they are required to serve a copy of their submission on the applicant (according to s96(6)(b) of the RMA). The council may also choose to send copies to the applicant itself.

Receipt of submissions

When all submissions are received, it is good practice to:

- Acknowledge the receipt of each submission via their electronic address for service if provided or in writing. This gives submitters certainty their submission has been received.
- Provide information in the acknowledgement letter on any pre-hearing meeting to be held; a summary of other submitters' concerns could also be included
- Let the submitter know that if a hearing is to be held they can request independent commissioner(s) to hear and decide the application instead of the council (s100A). However, the submitter should be informed that they may be liable for all or part of the costs.
- Combine the notice of hearing with the acknowledgement of the submission, if a hearing date has already been set.
- State that latest date that a decision can be issued in order to meet statutory timeframes. This will be either 90 days after the close of submissions for notified applications or 60 days after the close of submissions for limited notified applications.
- Inform the submitters that the applicant has the ability to place the application on hold under s91A for up to 130 working days (or the remaining relevant time once other excluded days have been taken into consideration).

  Receiving submissions electronically (such as by e-mail or through a council website) can save time by:

- Receiving and automatic date stamping submissions at any time without the need for staff on duty
- Being able to copy and paste text when summarising submissions
- Enabling submissions to be easily forwarded to the applicant electronically
- Having mandatory fields in online submission forms to ensure all boxes are filled in
- Less copying and posting of paper submission forms
- Avoiding the time for submissions to be delivered via post and submissions being lost in the mail.

Submissions lodged electronically do not require a signature.

Submissions and trade competition

Section 308B of the RMA makes it clear the RMA is not to be used by trade competitors to oppose applications on trade competition grounds. A trade competitor can only submit on an application if they are directly affected by the adverse environmental effects of the application. If a trade competitor is considered to be adversely affected by the application, their submission must only relate to the effects on them and cannot consider trade competition or the effects of trade competition.

For more information on submissions and trade competition refer to the Trade competition fact sheet on the Ministry for the Environment's website.

Advising the applicant

A council must provide the applicant with a list of all submissions received as soon as

reasonably practicable after the close of submissions (s98). If the applicant has provided an electronic address for service, this list must be provided to that electronic address (unless they have requested another method of service).

Although the RMA requires all submitters to serve a copy of their submission on the applicant, in practice, this does not always happen. Therefore the council list is important to ensure the applicant is aware of all of the submissions.

Withdrawal of submission or request to be heard

There is no specific section of the RMA that deals with the withdrawal of a submission or the request to be heard. However, for any withdrawal, it is good practice to require the submitter to do so in writing.

Where submitters choose to withdraw a submission or the right to be heard, it is also good practice to clarify their legal status relating to the application. A submitter who no longer wishes to be heard will retain the right to appeal any decision made by the council (if the appeal relates to a matter raised in their submission and the application was not for a boundary activity (defined in s 87AAB), however, if the submission is withdrawn, the submitter has no right to appeal.

Affected parties written approvals

A person is not an affected person for the purpose of giving limited notification if that person has given approval for the proposed activity by written notice ((s 95E(3)(a)) When these are provided to the consent authority by an applicant, they should be checked to ensure that any accompanying plans have also been provided (and signed) and have not been superseded by more recent amendments or plans. Written approvals to an application cannot be conditional.

Pre-hearing meetings

The purpose of a pre-hearing meeting is to clarify or facilitate resolution of any matter or issue associated with an application for resource consent (s99(2)(b)).

A council may hold a pre-hearing meeting at the request of the applicant or a submitter, or on its own initiative. The following may be invited or required by council to attend the meeting:

- The applicant
- Some or all of those persons who have made a submission; or
- Any other persons considered appropriate.

The applicant's consent is required before any other party can be required to attend a meeting (s99(3)). It is good practice to think broadly and to involve all parties who may have an interest in the matter.

When and why should a pre-hearing meeting be held?

Pre-hearing meetings can be held at any time before a hearing. It is good practice to discuss the potential for a pre-hearing meeting and its process with the applicant, and obtain approval **in principle** to proceed if appropriate, before the submission period closes.

Pre-hearing meetings can assist in clarifying issues, drafting conditions, personalising the parties involved, and enhancing communication after the meeting. Involving the applicant and submitters in the decision-making process also ensures they 'own' the result, more so than if the decision was made by someone else.

The informal nature of pre-hearing meetings can also allow parties to be more open and creative in finding mutually acceptable solutions. This is especially important where the council, applicant and interested parties need an ongoing relationship. Even when a hearing is subsequently required, pre-hearing meetings can help clarify issues, enabling the hearing to be more focused and less adversarial.

Be realistic about expectations and outcomes associated with pre-hearing meetings. They may not always resolve issues and may even extend the process when parties are not willing to resolve issues.

Can the eventual decision-maker on the application be present at the pre-hearing meeting?

A member, delegate, or officer of a council who decides for the council on the application may be present and participate at the pre-hearing meeting subject to two conditions:

- the parties attending the meeting agree to this
- the council is satisfied that the person should not be disqualified from the meeting.

Pre-hearing meetings generally work best when run by an experienced facilitator who is independent of the process. This brings a sense of objectiveness to the proceedings and should give all the parties confidence their concerns or issues are heard.

How do I coordinate a pre-hearing meeting?

The following list provides some general good practice tips for inviting parties to attend a pre-hearing meeting.

- The council officer should have already discussed the pre-hearing process with the applicants and obtained their approval in principle.
- The council officer should have provided information on pre-hearing meetings to the applicant and the submitters with the acknowledgement of submissions letter
- All parties should be contacted to see if they are interested in participating. It may be useful to include on the submission form a question about their willingness to participate in a pre-hearing meeting.
- The interested parties should be informed of what dates, times and venue would be appropriate, and asked if they have any special requirements.

- If iwi are involved, check for any required protocols.
- If a pre-hearing meeting is to be held, the council should provide all parties with written confirmation of its date, time and venue, who will attend, how the meeting will be conducted and a draft agenda detailing the purpose of the meeting. Ask parties to confirm their attendance and allow them to suggest agenda items.
- The council officer should phone the parties a few days before the meeting as a reminder.
- The person responsible for processing the consent application should not chair the pre-hearing meeting. Chairing could create conflicts of interest and may affect the processor's ability to make objective recommendations in the final report.
- At the end of the pre-hearing meeting, make sure the facilitator informs every one of the process from here.

Failure to attend a pre-hearing meeting

If a person **required**, as opposed to 'invited', to attend the meeting fails to attend, and does not provide a reasonable excuse, the council may decline to process that person's application or consider their submission (s99(8)). The affected person may not appeal against this decision under s120, but may object under s357A against the decision to the council (ss99(9) and (10)).

Record of outcomes from a pre-hearing meeting

Once a pre-hearing meeting has been held, the chairperson prepares a report setting out the issues agreed at the meeting and those that remain outstanding (s99(5)(b)). The chairperson may also set out the nature of the evidence that the parties are to call, the order of procedure, and a proposed timetable for the hearing (s99(5)(c)).
The report must be distributed to all parties that attended the pre-hearing meeting and received by all parties at least five working days before the hearing begins (s99(6)). The report can be sent out with the officer's report before the hearing. The council must have regard to the report in making its decision on the application (s99(7)).

Mediation

Mediation can help parties identify common ground and define, narrow and resolve issues. The RMA provides for mediation for applicants and persons who have made submissions to a resource consent application (s99A(1)).

A council may refer the matter to mediation either at the request of an applicant or submitter or at the council's initiative, but only with the consent of all the parties. Parties cannot be made to participate in mediation and this is only appropriate where there is a willingness to do so.

The mediation must be conducted by a person who has delegated authority from the council to mediate, or by an appointed mediator if it was the council that made the application for consent (s99A(3)). The person conducting the mediation must report the outcome to the council (s99A(4)).

The RMA is silent on whether a hearings panel member can be involved in the mediation process. Engaging in preliminary discussions could undermine a hearings panel member's ability to determine the case solely based on the evidence presented as part of the

hearing process. Therefore councils tend to appoint an independent person to chair pre-hearing or mediation meetings.

Mediation can have the benefits of reducing the hearing time and/or negate the need for a hearing and lessen the chance of subsequent appeals. But mediation can also lead to delays in the process. Councils should provide advice to parties entering into mediation about its purpose, limitations, and how any outcomes will be used in the decision-making process. It needs to be made clear to parties entering mediation that there is little point in mediation if they are not prepared to do so with an open mind, and are unwilling to modify their position in any way.

Hearings

Statutory requirements for hearings

It is not always necessary that publicly or limited notified applications proceed through a formal hearing process. A hearing is only required in one of the following situations:

- the council considers it necessary
- the applicant requests a hearing
- a submitter wishes to be heard.

Note that the applicant may still want a hearing (where there are no submissions) where the Council seeks to impose conditions which the applicant is not prepared to accept.

When should a hearing be held?

A hearing should be held for a notified or limited notified application unless:

- no submissions are received on the application, or
- no submitters wish to be heard in relation to their submission.

There is no longer a deadline that hearings must be started by. Instead, publicly notified hearings must be completed within 75 working days from the close of submissions and limited notified hearings must be completed within 45 working days from the close of submissions. This is to provide greater certainty about the closing dates for hearings and when the decision will be issued. Refer to" "A guide to the six-month process for notified resource consent applications") on the Ministry's website for more information on the timeframes for publicly and limited notified applications.

Informing the parties that a hearing is to be held

The applicant and submitters who stated their wish to be heard must be given notice of the start date and time, and place of the hearing, at least 10 working days before the hearing starts (s101(3)). Any council-developed pamphlets or guidance for people attending hearings should be included with the letter advising people of the hearing.

As outlined above, the applicant is required to provide their evidence at least 10 working days before the start of the hearing and submitters must provide any expert evidence that they are calling at least five working days before hearing. Given that these timeframes are quite tight, it is best practice to advise all parties of the hearing date as soon as possible to enable them to prepare their evidence early in the process.

Pre-provision of evidence

Section 103B now makes it mandatory that the council's evidence, the applicant's evidence and any expert evidence called by submitters, is circulated prior to the commencement of a hearing. Section 103B(7) overrides sections 41B and 42A (3)-(5).

Subsections 103B(5) and (6) require the consent authority to make the documents available at its office, and to give written or electronic notice to all the parties that this is the case. Best practice is to also make evidence available electronically on the consent authority's website.

The deadlines for the pre-circulation of evidence are as follows:

Information to be circulated	Due date for circulation
The council officer's s42A report and any briefs of expert evidence	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

The potential benefits of providing briefs of evidence before a hearing include:

- reducing the length and cost of hearings by focusing on matters remaining in contention and conflicting opinions, thereby narrowing the scope of evidence presented
- assisting the hearings committee and other parties to better prepare for the hearing
- enabling the reporting officer to consider the evidence before the hearing and to seek further opinion if necessary.
- avoiding late and/or surprise changes to applicant's proposals or to the content of submissions being introduced at hearings
- giving all parties time to go through information before the hearing.

Because all evidence will now be pre-circulated, commissioners and hearing panels will be able to read this in advance of the hearing and establish where there is still contention between the council, applicant and submitters. This allows commissioners and hearing panels to focus the hearing on those matters remaining in contention.

There are tools available to commissioners and hearing panels in section 41C to help direct hearing procedures to make these more efficient and focused on the outstanding areas of contention. This includes powers to:

- take parts of evidence as read
- direct that evidence be presented within certain time limits
- limit presentations to matters in dispute.

This allows the time spent in the hearing to be reduced and focused on the important issues, without compromising natural justice. The provision of written evidence before the hearing helps commissioners use these tools to best effect.

Site visit

All decision-makers should undertake a site visit before the decision is made, and preferably before the hearing. A site visit at an early stage helps understand the context of the application, the nature of the surrounding environment, and any issues raised in submissions. A longer, more complex hearing may require another site visit during the course of the hearing to focus on matters that may have arisen.

The hearing panel /commissioner(s) should visit the site alone or with a council officer who is not the reporting officer. If this is not possible, for example due to staff resourcing constraints, then the reporting officer present cannot express any views and opinions to the committee.

Hearings protocol

Hearings are to be held in public and a procedure needs to be established that is appropriate and fair in the circumstances. Exceptions to holding a public hearing can be made to protect sensitive information (s42).

The way in which the hearing is to be run should be explained by the chairperson at the beginning of the hearing. Matters that might be referred to include:

- directing the order of business
- introducing parties to the hearing (including submitters)
- who may speak and at what time
- directing the evidence and submissions to be recorded or taken as read, or limited to matters in dispute
- directing the applicant and/or submitters to present within a certain time limit
- that evidence is not given on oath
- there is no cross-examination
- general respect for tikanga Māori
- the availability or otherwise of equipment such as video, overhead projector, whiteboard etc.
- potential timeframe for a decision, and appeal rights.

The order of business before or during a hearing should be directed to promote the efficiency and effectiveness of the hearing. Decisions about directing or limiting evidence, and taking submissions as read, would generally be guided by: any pre-hearing report or mediation; the scale and significance of the application; the issues involved; and consideration of the pre-circulated evidence. While it is helpful for an applicant to amend their application at the hearing to reduce potential effects and address matters raised in submissions or in the officers report, additional or new evidence should not be introduced

as other parties would not have had the opportunity, or more importantly time, to consider it.

The officer's report should note that the council/commissioners will not necessarily adopt the officer's recommendations.

The normal order of the procedure of a hearing is as follows:

1. introduction by the chairperson
2. applicant presents the application and supporting evidence
3. submitters in support speak to their submissions
4. submitters in opposition speak to their submissions
5. council officer summarises the council report and makes any comments regarding information provided at the hearing
6. applicant responds
7. hearing is closed or adjourned for a decision to be made.

In most cases it is appropriate for applicants to present their case before the council staff reports on the application. This will avoid staff misinterpreting the applicant's case, especially if the application has changed as a result of pre-hearing consultation, or of council officer recommendations, or of effects mitigation.

In some situations, it can be advantageous for the council officer to summarise the proposal and recommendations before the applicant speaks. This can raise awareness of the relevant plan provisions and provisions of the RMA (ie, relevant parts of sections 104, 104A-D and 105) which the hearing panel or commissioner(s) are required to consider when deciding upon the application. This is most appropriate where an applicant is not represented by legal counsel or consultant familiar with the RMA. More than one council officer may need to present if an internal specialist advisor (eg, a subdivision engineer) has provided key input to the assessment.

Alternatively, contracted consultants may act on behalf of the council. If they are to present written reports, then these must also be circulated before the hearing in conjunction with the s42A officer's report.

The council/commissioners may also request the applicant to provide further information at the hearing (s41C(3)), or they may commission a report on any matter on which the council requires further information (s41C(4)). If any information is requested or commissioned and received after the start of the hearing, then this information must be provided to the applicant and every person who made a submission and stated a wish to be heard. It must also be made available (at the council office) to any person who submitted and did not wish to be heard (s41C(5B)(b)).

Usually an officer's report is taken as read. It is however useful for the officer(s) to comment on any matters that were raised during the hearing, and be willing to amend their conclusions should the evidence justify this.

The applicant's right of reply should be confined to addressing points that have been raised during the hearing, and particularly amendments that may be made to satisfy matters raised during submissions. It should not re-litigate the applicant's case.

Virtual hearings under the RMA

Hosting meetings virtually has become more common. Alert Level restrictions, introduced in response to COVID-19, impacted on councils' abilities to hold face to face public hearings. Some councils are starting to use 'remote access facilities' (such as Zoom) to undertake RMA hearings virtually.

The Ministry for the Environment (MfE) has released interim guidance to assist councils to use remote access facilities to host virtual RMA hearings. You can find the guidance on the MfE website here.

For many resource management practitioners and councils, holding virtual meetings, hearings, and mediations, has been necessary to enable planning and consenting processes to continue during alert level restrictions. For a council to host a hearing virtually, principles of natural justice apply to ensure all procedures are open, fair and transparent in all circumstances.

Section 39(1) of the RMA requires councils to hold hearings in public and conduct them fairly and appropriately in the circumstances.

Section 39AA of the RMA was inserted in response to COVID-19 and enables hearings to be conducted using remote access facilities. Remote access facilities are defined in section 39AA(1) as an audio link, audio-visual link and any other similar facility. Councils, or a person given authority to conduct a hearing (the authority), can direct, on its own initiative or at the request of any person with a right to be heard, that a hearing or part of a hearing be conducted using remote access facilities. A council or authority can do this provided that it considers that it is appropriate and fair to do so and it is satisfied that remote access facilities are available.

With the recent increase in the use of remote access facilities some advantages of hosting a council hearing virtually include:

- the ability for an authority to be adaptable in times of uncertainty
- efficiencies for time and cost for those who would normally travel to partake in a hearing
- more transparency as they increase opportunities for the public to be informed and recorded proceedings enable the hearing to be viewed by parties at any time
- the environmental benefits of less travel and consumption for all participants

Councils who conduct hearings must recognise tikanga Māori where appropriate and this applies to any hearings held virtually. As tikanga is dynamic, tangata whenua views may differ across iwi and hapū as to what virtual tikanga procedures are appropriate.

Discussions with tangata whenua about virtual hearings should be done early, possibly before other submitters. These discussions should include kōrero on how to support them to ensure tikanga can be appropriately incorporated into hearing procedures.

The Ministry would like to hear feedback from councils, practitioners and others involved in running hearings remotely, about how useful the guidance is and whether there are additional areas that could be included. Please send any feedback or questions to RMQueries@mfe.govt.nz.

The Resource Management Law Association hosted a webinar in June 2020, discussing

council hearings in a virtual world. A panel of seasoned hearing commissioners (Dr Phil Mitchell and Paul Cooney) along with experienced Hearings Facilitator Sue Bulfied-Johnston share their experiences and lessons learnt from conducting hearings remotely, particularly during the COVID-19 lockdown. A recording of the webinar can be found here.

Joint hearings

Some proposals may require resource consents from more than one council, such as a territorial and regional council. In such cases, s102(1) of the RMA promotes a joint hearing. Joint hearings help to:

- allow all the relevant information to be presented together
- maintain consistency in decision-making between district and regional councils
- reduce costs and avoid time delays for applicants, submitters and councils

Where a joint hearing is to be held, the regional council for the area concerned will often take the lead role in setting up the hearing, and establish the procedure to be followed. The responsibilities involved in the process need to be decided between the councils at an early stage of the process. The most effective way to achieve this is for officers from each of the councils to meet and allocate responsibilities. Decisions made at this meeting need to be well documented, and a copy of this record kept by each of the councils.

Who has speaking rights at a hearing?

Only the following people have the right to speak at a hearing:

- the applicant and anyone presenting evidence on their behalf
- submitters who have requested to be heard and anyone presenting evidence on their behalf
- any other experts presenting evidence on behalf of the council who had a report circulated before the hearing
- any committee member or commissioner(s).

Any submitter who did not request to be heard or anyone simply present to view proceedings at the hearing does not have the right to speak. The council officer does not have an automatic right to speak but in most cases is invited to do so. Allowing the council officer to speak is considered good practice.

Striking out submissions (s41D)

Before, during or after a hearing, the council/commissioners can direct that all or part of a submission be struck out if it considers that the submission (or part of it):

- is frivolous or vexatious
- discloses no reasonable or relevant case
- would otherwise be an abuse of the hearing process if the submission was allowed to be taken further
- it contains offensive language
- is only supported by material that purports to be independent expert evidence on a matter, if that material is prepared by a person who is either not independent or does not have the sufficient specialised knowledge or skill to give expert evidence on the matter

When exercising this power the council must record its reasons for the direction (s41D(2)(b)). A person whose submission is struck out has a right of objection to the council under s357 (s41D(3)).

In practice, this power should only be exercised in a clear situation where appropriate reasons can be given. Good practice tips in considering whether to strike out a submission include:

- whether the submitter has acted in a frivolous and vexatious manner in the past (for example, to the extent of having costs awarded against them by the Environment Court)
- whether the submitter may simply be misinformed or inexperienced, or unaware of the limitations on the matters able to be considered by the council
- how much speaking time the submitter has requested in terms of the overall hearing schedule
- whether there may be irrelevant parts of the submission that could be struck out, preserving more relevant aspects.
- if a person presents material in support of a submission and purports that it is independent expert evidence, that person should be able to demonstrate why this is the case. Expertise and skill may be demonstrated by detailing the author's experience, qualifications or membership of professional organisations. Independence may be demonstrated by codes of ethics, declaring any actual or potential conflicts of interest, or articulating the extent of their involvement in the proposal or related proposals. Not all submissions have to be supported by independent expert evidence in order to be considered valid by decision-makers. Submitters can still comment on any aspect of a proposal that they wish.
- A decision-maker may choose not to strike out a submission containing offensive language, depending on the context.

The council needs to bear in mind the RMA's inclusive approach to public participation, and to exercise such power with great care.

If a submission is struck out, no Environment Court appeal against the consent decision is available to that submitter, however there is a right to object to the decision to it being struck out under s357.

Submissions by trade competitors on trade competition grounds (in accordance with s308B) could be struck-out under these provisions. More ideally, submissions by trade competitors which relate to trade competition or the effects of trade competition should not be accepted by a council.

Councillors and commissioners

Most councils tend to appoint councillors with delegated authority to make decisions on notified resource consent applications. All members of hearing panels must be accredited under the 'Making Good Decisions' programme unless there are exceptional circumstances. The Making Good Decisions programme provides training in the council's functions, responsibilities and powers under the RMA.

Where a conflict of interest for the council may exist (eg, where the council is both the applicant and the consent authority), independent commissioners should hear the

application as a matter of course.

An applicant or person who makes a submission on an application may request (in writing) that the application be heard by one or more independent commissioner(s). This request must be made no later than five working days after the closing date of submissions (s100A). Submitters are liable for some of the costs of this request (s36) and should be informed of this.

Writing the report on a notified or limited notified application

Purpose of the hearing's/officer's report

The hearing's/officer's report serves to advise the decision-maker(s) (the hearings panel or commissioner(s), or if no hearing was held, the person with delegated authority), on the matters to be considered. This ensures that an informed judgement on the application can be made. It is important that the author of the report is present at the hearing to answer questions, and that they not be 'represented' by another officer or consultant.

What to include in the report

The report needs to assess the application and the supporting AEE, and include an analysis of the matters required by the RMA and the plan(s). It should summarise the submissions received, identify any written approvals supplied, and the outcomes of any pre-hearing meeting(s) or mediation. The report should clearly identify all non-compliances with the relevant Plan(s). Where there is disagreement with any of the applicant's identification of the non-compliances, they should be clearly identified in the officer's report. It may include a recommendation as to whether the application should be granted or declined, or alternatively a conclusion as to whether the effects are (or are not) more than minor, and whether the proposal is contrary to the objectives and policies, leaving the issue of granting or declining consent to the council/commissioners. Regardless of whether the report favours a grant of consent, it is good practice to attach any recommended conditions, including monitoring, as this provides focus and can simplify the decision-making process should consent be granted.

Those presenting expert evidence should read and be familiar with the Environment Court's Code of Conduct.

As with all reports for consent applications, the scope and depth of a report on a publicly notified or limited notified application should reflect the scale and significance of the environmental effects associated with the proposed activity.

In accordance with s42A(1A), the report does not need to repeat information that has been included in the application. For example, if the proposal, site description or AEE is

correct and has been checked and agreed with by staff, any or all parts of these assessments can simply be adopted in the officer's report. These provisions help to avoid unnecessary duplication and provide for more efficiency in report writing.

Councils may have a set format for writing reports on notified consent applications.

It is not good practice to state in the report that the applicant can address certain matters/issues at the hearing. Any gaps should be addressed by way of a request for further information before completing the report. This will provide submitters with the opportunity to consider all information.

It is good practice and courteous to call the applicant and discuss the report's contents before finalising it. This is particularly important if the recommendation is for the application to be declined as the applicant may wish to make changes to the application before the hearing or before the report is released.

When should the report be sent out, and to whom?

The report should be sent to the applicant, any submitters who wish to be heard, and the decision-maker(s) - whether it be a hearing committee, commissioner(s), or a council staff member with delegated authority.

Section 103B(2) of the RMA requires that the report **arrives** 15 working days before the hearing begins.

Where an application is made for a significant project and it is to be heard, it is good practice to circulate the council officer's report earlier than 15 days before the hearing. This allows all parties to consider the recommendations and assessments made, address them, and potentially commission further evidence where required.

What time frames apply?

The time frames and processes for a publicly notified and limited notified applications are shown in the flowchart on the Ministry for the Environment's website, and are outlined in greater detail in the MfE publications: A guide to the six month processing for notified resource consents applications, and Resource Management (Discount on Administrative Charges) Regulations 2010: Implementation Guidance.

Notified and limited notified resource consents can involve two decision paths – those that do not require a hearing and those that do require a hearing. The processing time for such applications varies between 60 and 130 working days.

1. Notification Determination. The notification determination needs to be made within 20 working days after the application is first lodged (s95(2)(b)), or within 10 working days in the case of a fast track application (s 95(2)(a))

2. Submission Period: 20 working day submission period (s97). In the case of limited notified applications, this can be reduced if a submission has been received by all affected persons (or written approval of these persons, or notice

that they will not make a submission),

3. Applicant or submitter can request independent hearing commissioners up to 5 working days after the close of submissions (s100A(3)).

4. Is further information needed as a result of submissions? If further information is required, request can be made however the clock cannot be stopped.

5. Does a report need to be commissioned? The clock can be stopped for the commissioning of a report if the applicant agrees.

6. If a hearing is not required, the decision on the application is to be issued no more than 20 working days after submissions close (s115(4)). Total working days = 60.

7. If a hearing is required (note that a pre-hearing meeting (s99) or mediation (s99A) may also occur), pre-circulation of evidence must be carried out. Council's section 42A report and evidence is due 15 working days before the hearing, applicant's evidence is due 10 working days before the hearing and submitters expert evidence is due five working days before the hearing.

8. Notice of hearing is to be provided at least 10 working days before the hearing (s101(3)).

9. Completion of Hearing:
    a) For publicly notified applications, the hearing must be completed 75 working days after the close of submissions.
    b) For limited notified applications, the hearing must be completed 45 working days after the close of submissions.

10. Notice of decision is to be issued no more than 15 working days after the hearing closes (s115(2)).

Stopping the clock:

The Act only allows the 'clock' to be stopped for the following reasons for consents that are decided by a council:

- s88C(2) – First request for further information (s92) as long as this request is made prior to notification
- s88C(4) and (6) – The commissioning of a report (s92(2)(b))
- s88C(2), (4) and (6) – Requests for Direct referrals
- s88E(2) – Waiting for other applications to be lodged (s91(2))
- s88E(3) – Waiting for written approval where parties are considered affected
- s88E(6) – When referred to mediation (s99A)
- s88E(8)/s88G – At the request of the applicant (s91A; s91D)
- s88H – When fees due at lodgment or notification of the application are outstanding.

Excluded timeframes:

If the council has not complied with the timeframes specified in the Act (and outlined in the Schedule to the Resource Management (Discount on Administrative Charges) Regulations 2010) (the Discount Regulations), the council must give a discount on fees paid by the applicant at a rate of 1% for every additional (overtime) working day. In order to calculate whether a discount applies, the Discount Regulations specifically exclude (deduct) the following days from the calculation of days:

- the working days on which a council is waiting for the full payment of an administrative charge under section 36(7). This includes the days awaiting for the payment of a notification fee (if that fee is fixed);
- the extended working days as provided for by section 37(1) (as noted below)
- any of the excluded days listed by section 88B (as noted above)
- the working days when a council does not process the application for any other reason in the RMA; in any other enactment, or for a reason based on any rule of law
- for non-notified applications where a hearing is held, the working days from the commencement to the close of the hearing
- if the application needs to be re-notified, the working days starting on the day on which the application is first notified and ending on the last working day before the application is re-notified

Further details in relation to these regulations can be found in the MfE guidance: Resource Management (Discount on Administrative Charges) Regulations 2010: Implementation Guidance.

Modifying timeframes

The consent authority may only extend the time periods of the Act as follows:

- s37A(4) – When the extension sought is no more than twice the maximum time period and special circumstances exist, or the applicant agrees to the extension; or
- s37A(5) – When the extension sought is more than twice the maximum period and the applicant agrees to the extension.

For further guidance on the use of Section 37, refer to the relevant guidance note.