



Pre-hearing meetings and hearings

■ Introduction

This fact sheet provides information about the pre-hearing meeting and hearing process under the Resource Management Act 1991 (RMA 1991). The Auckland Regional Council's (ARC) procedures for pre-hearing meetings and hearings are also outlined.

A pre-hearing meeting and hearing provides an opportunity for consent applicants to give information about their proposal and for parties to be involved in the decision-making process by speaking about the issues they raised in written submissions.

■ Pre-hearing meetings

A pre-hearing meeting is an informal meeting held before the hearing to clarify or resolve issues raised in submissions. The council arranges a pre-hearing meeting. It is not required under the RMA, but is useful in practice.

Pre-hearing meetings provide an informal forum for discussion between the applicant and submitters to:

- Help parties understand the resource management process, including how decisions are made on applications
- Gain understanding of the application and its environmental effects
- Identify and discuss issues and concerns (in a less formal manner than at a hearing)
- Identify any additional information required
- Facilitate on-going negotiation required to resolve outstanding issues, e.g. the applicant may amend parts of their proposal or agree to certain conditions on their consent if it is granted.

An effective pre-hearing meeting may allow for a more focused and less adversarial hearing for those involved. The resolution of issues at a pre-hearing meeting may also mean that a hearing is not required.

■ Who can attend a pre-hearing meeting?

- The applicant and all submitters are invited to attend a pre-hearing meeting
- An ARC consents officer may invite or, if the applicant agrees, require submitters to attend a meeting
- A consents officer may also attend and participate if all parties agree
- A chairperson – this could be an ARC staff member or an independent facilitator who is considered impartial.

The ARC may refuse to process the application or consider submissions of someone who doesn't have a reasonable excuse (e.g. work or family commitments or health issues) for not attending a pre-hearing meeting. In that case, the person may not appeal against the decision on the resource consent or to become party to someone else's appeal.

There is a right of objection under section 357A of the RMA against the decision to refuse to process the application or to consider the submission.

After the pre-hearing meeting, the chairperson is required to produce a report setting out the issues agreed on at the meeting and those that are unresolved. The report may also set out matters as the nature of the evidence to be called or a proposed timetable for the hearing. It must be circulated to all parties that attended the meeting at least five working days before the hearing starts. It will be appended to the officer's report and the ARC must consider it when reaching a decision on the application.

■ Where and when will the pre-hearing meeting will be held?

- As soon as possible after the closing date for submissions. Time frames may vary depending on whether further information or consultation is required
- An ARC consents officer will arrange a convenient venue for all parties at or near the location of the proposed activity. All parties will receive written notice of the date, time and venue for the meeting about 10 working days in advance. In some cases, staff may phone them to arrange an informal meeting.

A site visit may be undertaken if it would help submitters to better understand the consent application.

The applicant pays all costs associated with holding the pre-hearing meeting as it is part of the overall costs of assessing and processing the consent application.

■ Mediation

The ARC may, at the request of the applicant and/or submitters, or on its own initiative, refer consent applicants or some or all of the submitters to mediation if there is a general willingness by all parties to participate. The mediation must be run by a person with delegated authority from the council or by another appointed mediator if the council has itself made an application for consent.

Mediation provides an opportunity for parties to define issues, identify areas of concern and explore potential options for agreement. It is more formal than a pre-hearing meeting and more time is taken initially for all parties to establish 'ground rules' and agree on a strategy to guide the mediation process.

Mediation may assist with reducing hearing time and lessen the chance of subsequent appeals. Any settlement of issues may also mean that a hearing is not required. The mediator is required to report the outcome to the council. The applicant also pays all costs associated with the mediation.

■ Hearings

A hearing is a formal meeting where a 'Hearings Committee' considers and decides whether a notified or limited notified resource consent application should be approved.

The Hearings Committee is normally made up of three regional councillors (called 'Commissioners' in this context) although 'specialist' or independent commissioners may be used if considered necessary to provide technical support to the councillors.

A Hearing is more formal than a pre-hearing meeting, but the ARC attempts to make the process as comfortable as possible for everyone. The hearing gives the applicant and all submitters who stated in their submission that they wish to be heard the opportunity to present their views to the hearing committee.

The hearing must take place no more than 25 working days from the closing date of submissions unless the council extends this timeframe.

■ When is a hearing required?

- When the ARC considers it necessary, or
- The applicant or a submitter request a hearing

A hearing is usually held when issues raised by submitters are not resolved, or when the applicant disagrees with the resource consent conditions recommended by consent officers. The ARC will give all parties at least 10 working days notice of the date, time and venue for the hearing.

A joint hearing will generally be held if other resource consent applications have been made to another council (e.g. local councils) in relation to the same proposal.

■ What information goes out before the hearing?

The ARC consent officer's report and recommendations on the application will be sent to the applicant and to all submitters who indicated their wish to be heard a minimum of five working days before the hearing.

The ARC has the discretion to request that the applicant provide their evidence before the hearing starts. This may be useful where the application involves complex issues, there are a number of consents being considered or there are conflicts in evidence between expert witnesses.

If this is the case, then the consent officer's report must be circulated to all parties 15 working days before the hearing. The applicant must provide evidence to the council 10 working days before the hearing and a submitter using expert evidence must provide evidence five working days before the hearing. The time period for starting the hearing is then extended to 40 working days from the closing date of submissions.

■ What information needs to be provided at the hearing?

- The Hearings Coordinator must be informed at least five working days before the hearing if a person intends to give written or spoken evidence in Māori so that an interpreter can be arranged. Alternatively, the person giving evidence may provide their own interpreter
- The applicant and submitters have to provide 15 copies of the evidence to be presented at the hearing
- The ARC may be able to provide special equipment for presentations (e.g. a projector). Anyone wishing to use such equipment should contact the Hearings Coordinator at least five working days before the hearing.

■ At the hearing

The hearings committee considers all the information provided by the applicant about their proposal, all the submissions and the consent officer's report on the application. This process ensures that the Commissioners have the information they need to make an informed decision on the applications in accordance with the requirements of the RMA.

All hearings are open to the public; including media (unless it is inappropriate that they attend for all or part of the hearing). The only people who can speak are the applicant, the submitters who have indicated they wish to speak at the hearing, ARC staff and the Hearing Committee or Commissioners.

■ The meeting format

Although the Hearing Committee is a quasi-judicial body that is able to set its own procedure, the general format for a hearing held by the ARC is as follows:

1. The Hearings Committee chairperson opens the hearing, introduces the parties involved, identifies the application(s) being considered and addresses administrative details such as the hearing timetable (including the order in which evidence and submissions are presented and time limits for presentations), scheduling of the site visit and any specific requests by the parties involved.
2. The applicant (or their representatives) presents their application and addresses the consent officer's report, submissions and any applicable amendments to their proposal or resolutions made at a pre-hearing meeting. They may call experts to provide evidence in support of their application.
3. Submitters who indicated their wish to be heard at the hearings are able to present their submission and clarify and expand on issues raised. They can only speak to the issues raised in their submission. They may call experts or representatives to speak and or provide evidence in relation to their submission.
4. The applicant speaks last at the hearing (applicant's 'right of reply') and may respond to comments from the submitters and consent officers if they wish.
5. Once the public part of the hearing is closed, the Committee will retire to make a decision on the application. In some circumstances the Committee may decide to adjourn the hearing to allow time for further information to be sought, or for further consultation to occur.

■ How long will the hearing last?

Sometimes, more than one day will be allowed for and is required for the hearing (e.g. when several resource consents are being considered at the hearing, or when there are many submitters who wish to be heard). However, not all the days put aside may be needed. Parties involved in the

hearing should allow for attendance on each day of the hearing and be prepared to present their submissions at the start of the hearing. They should be prepared for changes to the time or day allocated to them to give evidence.

The Hearings Co-ordinator (ARC staff member organising the hearing) will try to accommodate the time commitments of the parties involved where possible.

If more than one day has been allowed for and is required, the hearing will resume the following day at a time and venue specified by the chairperson at the end of the first day. Parties not present at the end of the first day should confirm the start time and venue for the next day with the Hearings Co-ordinator.

■ The rules of procedure

- The applicant and every submitter who wishes to be heard may speak and call expert evidence at the hearing, either personally or through a representative (e.g. lawyer or technical or planning expert). The evidence is not required to be given under oath
- The chairperson may also decide to direct and/or limit the evidence and to record or take submissions as read
- The chairperson or any member of the Hearing Committee may ask questions to any of the parties at any stage of the hearing
- No cross-examination of the parties is allowed
- The chairperson has discretion to let other parties ask them questions to seek clarification of particular points
- If there are several parties who wish to speak on the same issue the chairperson may limit the circumstances in which each party may speak
- The applicant's right of reply must be confined to matters arising from the evidence or legal points requiring clarification. No new issues may be introduced at this stage

The rules of procedure are followed to ensure that everyone has a fair chance to have their say and to present information that will be important in considering the application.

■ What happens after the hearing?

Deliberations

The Hearing Committee will consider all the information supplied by the applicant, the submissions and reports by the ARC consents officers. The views expressed in written submissions and in any pre-hearing meeting or mediation reports are taken into account, even if they were not formally presented at the hearing. The Hearing Committee will then decide whether or not to grant the resource consent and will consider any conditions which may apply.

The decision

The decision will be made in writing and will state the reasons for the Committee's decision. The decision is normally notified no later than 15 working days after the public part of the hearing has finished, unless the council extends the timeframe (for example, because of the complexity of the proposed activity and its environmental effects). The applicant and all submitters, even those that chose not to attend the hearing or speak in support of their submission, will receive a copy of the decision.

If no one appeals against the council's decision, the resource consent is granted or declined as appropriate.

Appealing the decision

If you disagree with any part or all of a decision made by the hearing committee you can appeal to the Environment Court within 15 working days of receiving notice of the decision. The appeal must be sent to the Environment Court in Auckland, and a copy must also be sent to the ARC, the applicant and all submitters (a list of contact details is available from the Hearings Coordinator).

An appeal to the Environment Court means that the application will be reconsidered in full by the Environment Court. The Court must have regard to the consent authority decision when considering an appeal. If appeals are lodged, the resource consent can't take effect until those appeals have been resolved.

The Environment Court is a court of law and all parties are bound by its decision. As with any judicial process, appeals to the Environment Court may be complex, expensive and time consuming, involving preparation of evidence and employing expert witnesses if appropriate. The Court can also award costs. If you are considering making an appeal, we strongly recommended that you seek advice from a legal or resource management professional.

■ For more information

Phone the ARC on 09 366 2000 and ask to speak with the Hearings Co-ordinator.

The ARC has a range of fact sheets designed to help applicants and submitters through the resource consent process. Copies are available online at www.arc.govt.nz or upon request. Topics include:

- Applying for a resource consent
- Resource consent processing timeframes and charges
- Making a submission on a resource consent application
- Now you have a resource consent.

How do I contact the ARC?

21 Pitt Street

Private Bag 92 012

Auckland

Ph: 09 366 2000 or toll free 0800 80 60 40

Fax: 09 366 2155

Email: info@arc.govt.nz

Website: www.arc.govt.nz

