

## **An Introduction to Making Submissions**

The following notes<sup>1</sup> are based on a presentation and handout prepared by David Forrest<sup>2</sup>, who served as the lead facilitator of the Environment Network Manawatu's (ENM's) 23 June 2014 workshop on making submissions. Information presented in the presentation covered the legal context governing submissions together with advice on how submitters can be most effective. Both the Local Government Act 2002 (LGA) and Resource Management Act 1991 (RMA) are addressed, with an emphasis on the latter.

### **Hierarchy of Plans and Their Relationships**

There are two major acts that govern planning processes and public input to those processes. The nature of consultation and submissions vary depending on the type of planning and the act governing that planning. The major elements of these Acts are as follows.

#### *Resource Management Act 1991 (RMA)*

- National Environmental Standards
- National Policy Statements
- NZ Coastal Policy Statements
- Regional Policy Statements
- Regional Plans
- District Plans

#### *Local Government Act 2002 (LGA)*

- Long-Term Plan (must cover a minimum of 10 years, includes Council budgets)
- Annual Plan (within the context of the long-term plan)
- Bylaws (specific bylaws or consolidated bylaws)
- Other, such as special consultative procedures on financial directions or strategy

These Acts can be viewed by searching on the title at [www.legislation.govt.nz](http://www.legislation.govt.nz).

### **Types of Submissions**

What makes an effective submission will vary, in part, on the subject matter and its content, on the type of submission and, in particular, on the Act under which the submission is made.

Submissions under the Local Government Act (e.g. submissions on long-term and annual plans and on council bylaws) are considered by Councillors and subject to their deliberations. As a result, numbers can matter with these submissions, as Councillor decisions will at least partially be responsive to the weight of public submissions. Some types of policy statements may also be influenced by the weight of numbers.

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1 This account of David Forrest's presentation was developed retrospectively into a stand-alone text by Sharon Stevens, Project Coordinator for the Environment Network Manawatu. It has been reviewed by David Forrest. Any omissions or errors introduced in this process are attributable to Sharon. This resource is available online from the ENM web site, <http://enm.org.nz>, under the menu items "resources" and "submissions." It has been reviewed most recently in March 2015.

2 David Forrest has spent a lifetime preparing and presenting or considering local authority applications, officer reports, and submissions under the RMA. He is a certified RMA commissioner and has served as such for almost two decades.

In contrast, a judicial or quasi-judicial process governs RMA submissions, including those submissions on national and regional policy documents, regional and district plans and plan changes, resource consent applications, and notices of requirements (NORs) and heritage orders. RMA submissions are heard by a certified RMA Commissioner or by a panel, which may or may not include elected Councillors, and decisions on them can be appealed to the Environment Court. Due to this method of decision-making, what matters is the weight of argument and the quality of evidence, not the weight of numbers.

With RMA submissions on plan and policy matters, it is advantageous to submit early in the process, for example at the draft document stage. Early submissions may be advantageous in the case of LGA submissions as well. The first submission (draft document) stages provide an unfettered opportunity to participate and influence the Council's thinking. The range of early submissions will, in part, decide the allowed scope of later submissions. As the process continues, there is a narrowing of the types of comments that are allowed and also, in the case of the Environment Court, of the people who are allowed to participate.

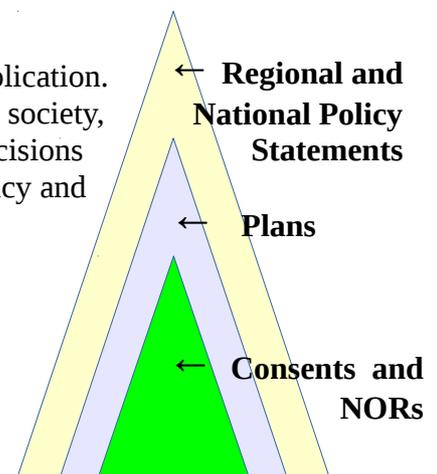
### Structure of Submissions under the RMA Act

As an RMA Commissioner, one problem that David sometimes sees is that people make good points in an inappropriate context. For example, they may submit about matters of policy in the context of a resource consent application. They may make excellent points about what would be the best direction for society, but these points are irrelevant to the resource consent. Resource consent decisions must be narrowly focused on how the application fits within the given policy and planning context.

One way to think about the structure of RMA submissions is like nested Russian dolls. Commissioners grant or refuse resource consent applications depending on how well they fit within the rules, objectives, and policies of particular district and regional plans. Notices of requirement (NORs) and designations, which may be made by government departments or councils to acquire land for public works projects such as roads, must similarly fit within those plans.

Similarly, regional and district plans need to be developed in ways that fit within higher order policy statements (e.g. national and regional policy statements).

Submissions need to target and be appropriate to the level that they wish to affect.



### RMA Hearings – by Whom?

Submissions under the RMA are heard by one of the following committees:

- A Hearing Committee of Councillors only;
- A Hearing Committee that includes Independent Commissioner(s) as well as Councillors;
- A Hearing Panel of Independent Commissioners;
- One Independent Commissioner;
- The Environment Court (by referral);
- A Board of Inquiry (by referral).

Note: At the local authority level, a submitter or an applicant may make a “Request for Hearing by Independent Commissioner(s)” (See RMA S100A and Form 12A). Someone might do this if they don't trust a Councillor, Hearing Panel, or Sole Commissioner to make a fair/apolitical judgement. If a request is made, it will be granted, but the applicant may be required to pay all the courts' costs, which are likely to be in the tens of thousands of dollars.

### **Tips on Presenting at an RMA Hearing**

In your presentation at a hearing, it is essential that you clearly express your concerns and say what you want from the decision makers. The following tips will help:

- Present clearly and succinctly;
- Address the Chair or Commissioners through the Chair;
- Provide a written outline or statement of key points, keeping this to no more than one page, if possible;
- Listen carefully to the questions from the Commissioner(s);
- Be aware of the distinction between being an advocate vs. being an expert witness.

### **Decision-making under the RMA**

Statutory requirements govern the scope of a Hearing Panel's or Commissioner's decision-making. A written report of their decision must cover the items listed below (Refer to RMA S113):

- Summary of evidence heard;
- Relevant statutory provisions that were considered;
- Relevant Standards, Policy Statements, and Plans that were considered;
- Principal issues in contention;
- Main findings;
- Reasons for the decision.

Submitters who address the principal issues in the context of the relevant provisions not only make it easier for the Commissioners, but also they make it clear how their evidence and arguments fit within the decision-making process. In addition, a submitter who puts all key points clearly on one page will be helping to highlight what is most important.

Following a Commissioner's decision, submitters have certain rights to Objection and Appeal. For more on these rights, refer to relevant sections of the RMA.

### **Recent changes in the RMA and LGA**

There are recent (2013) changes in the RMA and LGA act whose meaning will only become clear once case law has been developed. More changes are pending. Be sure to check exactly what provisions apply at the time you are making a submission.

## **Do You Want to Learn More?**

The Ministry for the Environment publishes a series of free guides to the Resource Management Act, plus a series of fact sheets explaining the September 2013 changes to the Act, which are not yet reflected in the guides. Both the guide and the fact sheets can be downloaded from <http://www.mfe.govt.nz/publications/rma/everyday/index.html>. Free print copies can also be requested.

Topics covered in the series include:

- 1.1 Getting in on the Act
- 1.2 Resolving Resource Management Act Concerns
- 1.3 Enforcement
- 1.4 National Level Guidance and Processes
- 2.1 Applying for a Resource Consent
- 2.2 Consultation for Resource Consent Applications
- 3.1 Your Rights as an 'Affected Person'
- 3.2 Making a Submission about a Resource Consent Application
- 3.3 Appearing at a Council Resource Consent Hearing
- 4.1 The Designation Process
- 5.1 Making a Submission about a Proposed Plan or Plan Change
- 5.2 Appearing at a Council Plan or Plan Change Hearing
- 6.1 Your Guide to the Environment Court
- 6.2 You, Mediation and the Environment Court
- 6.3 The Environment Court: Awarding and Securing Costs