

Submitting on Resource Consent Applications: The Why and the How Tips from Mike Smith, Chairperson, Water and Environmental Care Association¹

The Environment Network Manawatu thanks Mike Smith, chairperson of the Water and Environmental Care Association (WECA), for his willingness to speak at our 23 June 2014 community workshop on making submissions. The following notes are based on his oral presentation to the workshop participants.

Why Submit on a Resource Consent Application?

Why does WECA submit?

- In the national government, there are opposition parties. At the local government level, however, there are no elected (paid) opposition groups. Councillors quickly form working teams that are very responsive to staff. Given this cooperative dynamic, it's important for someone to take the opposition voice to keep important values from falling off the radar.

“Provide solutions! But if your solutions aren't listened to, drop your solutions and challenge people.”

Why does WECA only submit on water issues?

- Water issues are quite enough for one organisation to handle! It's important to be strategic about how to use time and other resources, and it's helpful to specialise and really get to know an issue area well.

WECA started as an organisation focussed on the activities of Horowhenua District Council, but as they grow in strength, they are slowly expanding their activities to take in more of the Manawatu Catchment area.

“So often arguments in favour of partial solutions come back to 'we can't afford it.' WECA simply doesn't accept that any more. We're tired of economic arguments prevailing over cultural, social, and environmental values.

Why does WECA take a confrontational approach?

- Confrontation plays an important role in building a better environment. Compare, for example, the number of people who are willing to volunteer in the Manawatu Gorge on biodiversity, recreational, and beautification work, compared to the number who are willing to submit on the poor quality of the water running through the Gorge. There's too few people involved in confrontation and holding people accountable.
- Water quality issues are under-resourced financially as well. Human waste removal costs people about one dollar a day. To take care of waste well, this figure should be more like \$1000 a year in Palmerston North and even more where economies of scale work against a district, as in Horowhenua. Confrontation is essential to avoid the lowest-cost option.

“Economic pragmatism can undermine good solutions. Someone might argue, we already have 'x' invested in a particular technology, so let's stick with it even if it's the wrong one. Or they might ask only what can be achieved within the current budget.

“Of course, that sort of narrow economic thinking is also a good reason for environmental groups to get involved in long-term planning!”

¹ Notes by Sharon Stevens, ENM Project Coordinator. Available online from the ENM web site, <http://enm.org.nz>, under the menu items “resources” on “submissions.”

How does a person make a submission on a resource consent application?

What's required on a submission?

- Horizons provides downloadable fill-in-the-form submissions for resource consents. Although submitters do not need to follow the form exactly, for a submission to count, *personal contact details must be provided as requested*.

What does WECA advise when filling in the form?

- After filling in the required personal details, the WECA strategy is to then modify the form as suits them. Often the questions on the form will pre-limit responses in ways that do not suit WECA. For example, the questions will often focus on a technical response to the problem, perhaps turning the focus to costs and feasibility. WECA prefers a focus on outcomes, so they might say, “We support the application with conditions to ensure that”
- To maintain the right to be fully involved in the consent application process, WECA advises the following statements are essential:
 - “We request to be heard.
 - “We request a pre-hearing.
 - “We request the right to bring support speakers.”

It is possible to choose to withdraw from the process at any point, but the above statements keep the door open for that choice to be made at each step.

Why request a pre-hearing?²

- During a formal RMA commission hearing you can't cross-examine anyone. The best you can do is ask oblique questions for clarification and hope they serve a purpose similar to a cross-examination. A pre-hearing is informal and lacks the same limiting rules, so it's a better place to have a full conversation.
- Commissioner hearings take approximately two weeks. Pre-hearings take half a day. WECA likes to invite experts into the process early. If they're at the pre-hearing, then maybe things will be resolved early and WECA won't need to bring anyone in for the costlier hearings.

What are WECA's tips for a good submission?

- Be precise.
- Stick to the point. Be brief.
- Stick to the advertised application points.
- Beware of giving the appearance of NIMBYism (“Not in my backyard”) as NIMBY concerns are explicitly disallowed.
- Declare any commercial interests you may have in the outcome or those interests will invalidate your submission.

² Whether to have a pre-hearing is decided by council management, not by elected councillors. Pre-hearings are becoming more common, with the Environment Court putting an additional focus on mediation. There may also be more than one pre-hearing.

Is it safe to submit?

It does not cost an individual to participate in the resource consent application process, right up to the point that they appeal a decision to the Environment Court. An appeal does create a high risk to the individual.

WECA, as an incorporated society, does provide some protections that are not available to individuals. Even so, WECA pays about 1/3 of its legal costs even when it wins an appeal.

“In WECA's experience, successful appeals mean that councils and applicants are more open to talking in the future.”

Note: Applicants can apply for a direct referral to the Environment Court when they know they won't get agreement at the earlier stages. However, any Environment Court decision will still need to be monitored and enforced by the regional council (e.g. Horizons), so there are real benefits to trying to get agreement in the first instance.