Ministry for the Environment
Manatū Mō Te Taiao

AN EVERYDAY GUIDE TO THE RMA > SERIES 6.1

Your Guide to the Environment Court

SERIES

Series Overview

Contents

Introduction

The Resource Management Act 1991 (RMA) is the main law protecting our environment. It's designed to ensure activities like building houses, clearing bush, moving earth, taking water from streams or burning rubbish won't harm our neighbours and our communities, or threaten the air, water, soil and ecosystems that we and future generations need to survive.

The RMA allows you to participate in decisions about the environment that affect you. However, if a decision is made that you are unhappy with, you may be able to appeal it to the Environment Court.

The Environment Court also has a number of other roles. It makes decisions on applications directly referred to it by the applicant (where agreed by the council) and proposals of national significance referred to it by the Minister for the Environment. The Environment Court is also involved in RMA enforcement matters and determines other types of applications, such as applications for declarations (a statement clarifying a matter associated with the operation of the RMA).

This guide introduces the role of the Environment Court, identifies who is involved in Environment Court hearings, explains why you may want to take proceedings to the Environment Court and, if so, what's involved. It also outlines other ways you can be involved in a case if you did not lodge the appeal yourself. Remember, if you're thinking about going to the Environment Court, you should consider seeking advice from a lawyer or a resource management professional.

What is the role of the Environment Court?

The Environment Court is a specialist court operating under the RMA. The Environment Court has the same powers as the District Court and has three main functions:

1: Appeals

When a decision made by a local council is appealed, the appeal is heard and decided on by the Environment Court. Council decisions may be appealed by an applicant or a submitter who considers that the decision is wrong and not in their best interests. For example, if a council decides to grant resource consent

for a large medical centre, an immediate neighbour (who has previously made a submission on the resource consent application) may appeal. Or a group of farmers may appeal a council decision on a regional plan change that would limit how they can farm land beside lakes and rivers.

A wide range of appeals can be lodged with the Environment Court. These include appeals on:

» resource consents
» proposed district and regional plans
» proposed regional policy statements
» designations
» heritage orders
» recommendations for water conservation orders.

When the Court hears an appeal it must have regard to the council's decision (or, sometimes, the decision of the requiring authority or special tribunal which made it), but the Court is not bound by it.

2: Hearing and deciding significant applications

Local councils make most decisions under the RMA, and the vast majority of decisions are for applications for resource consent. However, sometimes applications are decided in the first instance by the Environment Court, rather than the local council.

This can happen for different reasons. Some applications may be directly referred to the Court at the request of the applicant (and with the agreement of the council). Alternatively, the Minister for the Environment may decide that the application concerns a proposal of national significance, and so refer it to the Environment Court.

Matters that can be directly referred to the Environment Court are resource consent applications, applications to change consent conditions, and notices of requirement. For an application to be directly referred to the Environment Court, the applicant must apply to the council within five days from the time that submissions close, and direct referral must be agreed to by the council. While applications may not be of national

significance, they are generally so complex or large-scale that the council's decision would probably be appealed and they would end up in the Environment Court anyway.

When the Minister for the Environment refers a matter to the Environment Court for a decision because it is considered to be a proposal of national significance, many factors are considered first. Refer to 'An Everyday Guide to the RMA' booklet *1.4 National Level Guidance and Processes* for more information on nationally significant proposals.

3: Enforcement matters and other applications

The Environment Court may issue an enforcement order directing a person or an organisation that is causing a nuisance or environmental problem to fix it. Sometimes, an application for a declaration will also be made to the Environment Court if there are different views on plan rules and how that should be interpreted. Declarations on whether the RMA's restrictions on participation by trade competitors have been breached can also be sought from the Court.

The Environment Court can conduct an inquiry into the report of a special tribunal on a water conservation order. In these instances, the Court receives and hears submissions, then recommends to the Minister for the Environment whether the special tribunal's report should be accepted or rejected.

When fulfilling all these three roles, the Environment Court has the power to:

- direct councils to make changes to their policy statements or plans
- direct councils to review resource consents that have been granted
- confirm, amend or cancel decisions on applications for resource consents and designations
- stay or confirm abatement notices
- make or decline to make declarations, and make or refuse to make enforcement orders
- award costs in favour of one or other of the parties involved
- direct appellants to provide a deposit to pay for legal costs in case they lose the appeal.

The Environment Court registries are located in Christchurch, Wellington and Auckland. However, to ensure that it is accessible, the Court holds sittings as required throughout the country. These are usually held as close as possible to the site that the proceeding is concerned with. See the 'Contacts' section of this booklet (page 24) for details of the Court's registries.

Who is involved in cases in the Environment Court?

The Court is made up of **Environment Judges** and **Environment Commissioners**. Commissioners have knowledge and experience in areas such as local government, resource management, environmental science and the Treaty of Waitangi. An Environment Court usually consists of at least one Environment Judge and one or more Environment Commissioners. The Principal Environment Judge may give the power to hear and decide proceedings to an Environment Commissioner. You can read more about the Environment Court judges on the Environment Court website: www.courts.govt.nz/environment/

The **Registrar** and his or her staff manage the administrative functions of the Court. They may provide advice on the requirements for lodging appeals or other proceedings, but they do not give any legal advice. They may also provide information about proceedings that have already been lodged with the Court.

The **appellant** is the person or group making an appeal. In some cases, the person who lodges the proceedings is called an **applicant**, depending on what the action is. The **respondent** is the person or group against whose decision or actions a case has been lodged.

The **media** and the **public** can attend hearings, but not mediation sessions or cases in which the Environment Court orders that the evidence is to be heard in private. Sometimes the Court may order the evidence is not to be published.

Proceedings in the Environment Court will often involve a **territorial authority** or **regional council** (also called **local authorities**). The local

authority could be the party that lodges the proceedings, or the respondent in an appeal against one of their decisions.

The **Environmental Protection Authority** (a statutory office within the Ministry for the Environment) assists the Environment Court with managing and processing applications of national significance that are referred to the Court by the Minister for the Environment.

What actions does the Environment Court consider?

Council decisions

If you are the applicant, the consent holder, or have made a submission, you may appeal council decisions on the following:

- an application for a resource consent
- an application for a change of consent conditions
- a review of the conditions of an existing consent.

Unless the Environment Court decides otherwise, the consent cannot be given effect to (or the work started) until the appeal has been resolved. Anyone who has objected to a council decision about matters such as additional charges or costs, or further information requests, may appeal the council's decision on the objection to the Environment Court.

If you have made a submission on a proposed **plan** or **policy statement**, a **change to an operative plan** or a **variation to a proposed plan**, you can appeal the council's decision. Your appeal must be limited to the subject matter of your original submission. You can also appeal a council's decision to refuse or defer your request for a change to a plan or policy statement.

If you have received an **abatement notice** from a council requiring you to stop, or not to start, a certain activity, you can appeal this in the Environment Court. You can also apply to the Court for a **stay** of the abatement notice. If the Court orders a stay, then you will not have to comply with the notice while your appeal is being resolved. If you have not been granted a stay by the Court, you must comply with an abatement notice; it is an offence not to comply, and you could be prosecuted through the District Court.

Decisions of requiring authorities

The RMA allows for 'requiring authorities' (such as a government department or an electricity company) to request that an area of land be designated for use as a network utility (such as a road or telecommunications facility) or a large public work (such as a school or prison). The area is identified in a provision in the local council's district plan, and known as a 'designation'.

A requiring authority that wants a designation must first provide the council with a **'notice of requirement'**. The council may decide to publicly notify the application, limited notify the application to those persons it considers to be affected, or not to notify the application at all. If the application is notified, the council hears submissions on it. The council then makes recommendations (taking into account any submissions received) to the requiring authority. The requiring authority can accept or reject these recommendations, and may modify the requirement. For more information on the designation process, refer to 'An Everyday Guide to the RMA' booklet *4.1 The Designation Process*.

The council, or anyone who has made a submission, can appeal to the Environment Court against the requiring authority's decision. The Court can confirm or cancel the requirement, or can modify or impose conditions on it.

Alternatively, the council may notify the designation as part of its proposed plan. There may also be existing designations that a requiring authority wishes to continue or have modified in a proposed plan. Submissions can be made to the council regarding the plan, including any designations contained in it. If you have made a submission, you can appeal against the decision of a requiring authority regarding a designation. These processes also apply to **heritage protection orders** that are required by **heritage protection authorities**.

Actions involving other legislation

Appeals can also be lodged with the Environment Court that involve legislation other than the RMA. They are:

a. **Objections to compulsory taking of land**

   Relevant legislation: Forests Act 1949, Local Government Act 1974, Public Works Act 1981, Transit New Zealand Act 1989, Crown Minerals Act 1991, Historic Places Act 1993, Electricity Act 1992, Biosecurity Act 1993, Māori Commercial Aquaculture Claim Settlement Act 2004

b. **Appeals about archaeological sites**

   Relevant legislation: Historic Places Act 1993

c. **Appeals about felling beech forests**

   Relevant legislation: Forests Act 1949

d. **Objections to road stopping proposals**

   Relevant legislation: Local Government Act 1974

e. **Objections regarding access to limited access roads**

   Relevant legislation: Transit New Zealand Act 1989

f. **Appeals about regional pest management strategies**

   Relevant legislation: Biosecurity Act 1993

g. **Disputes over access to private land to maintain electrical transmission lines**

   Relevant legislation: Electricity Act 1992

h. **Administration of existing privileges**

   Relevant legislation: Crown Minerals Act 1991

i. **Appeals against allocation decisions of regional councils**

   Relevant legislation: Māori Commercial Aquaculture Claim Settlement Act 2004.

Applications

As well as appeals, there are certain applications that can be made to the Environment Court by councils or individuals.

The Environment Court can be asked to define or clarify a matter associated with the operation of the RMA. This is called a declaration. For example, a council may apply for a **declaration** that an activity is not allowed by the RMA or by a council plan. Individuals can also seek a declaration, such as in cases where they consider that they have existing use rights. The Court can declare that a person must adopt the best option to avoid or minimise adverse effects on the environment.

It is also possible for people to seek a declaration regarding the work of a council; for example, that a proposed provision in a plan is inconsistent with a policy statement.

An **enforcement order** is used to ensure a person complies with any rules or orders made under the RMA. It is generally used after other measures haven't worked. The Environment Court can order that a person not start, or not continue, an activity that it considers will have an adverse effect on the environment. The Court can also require that any harm caused be remedied or mitigated, and order the reimbursement of anyone who has spent money doing this due to the actions of someone else.

Usually, anyone can apply for an enforcement order. The exceptions are enforcement orders that enforce a resource consent condition, or a rule in a plan that requires a person to adopt the 'best practicable option' to avoid or minimise adverse effects of a discharge. In such cases, only the consent authority or the Minister for the Environment may apply. An enforcement order can be brought against anyone, with the exception of the Crown. It is an offence for a person not to comply with an enforcement order.

Points to consider before going to the Environment Court

You may choose to appeal to the Environment Court if you are dissatisfied with a decision made by a council on a resource consent application, proposed plan or other decision such as a designation or heritage order. Before bringing proceedings in the Environment Court, there are a number of things you should consider.

Time

The time it takes to resolve an appeal in the Environment Court has been significantly reduced, but proceedings can still be lengthy. You should allow at least six months for an appeal against a resource consent decision to be heard and decided, and longer for an appeal against a provision in a plan.

It is possible – or even likely – that your case may be resolved between the parties (through negotiation and mediation, or by withdrawal) and not need a full hearing. But by lodging an appeal or application, you have asked the Court to resolve the dispute and the Court has ultimate control over timing and the procedures to be followed. Wasting the time of the Court or other parties is frowned upon and may result in costs being awarded against you. Information should be communicated in a timely fashion or in accordance with any directions the Court may give.

Seek professional advice

While it is not essential to be represented by a professional when presenting your case to the Environment Court, a resource management professional (ie, a **planner** or a **lawyer**) can pull various aspects of your case together. They can talk to you about the likely success of the proceedings, based on previous Court decisions and the law. This is important due to the ability of the Environment Court to order parties to pay costs (see below). They can also ensure the right procedures are followed, including making sure your action is lodged correctly and served on the necessary people, and that evidence is exchanged with the other parties. **Community law centres** (and, in some areas, **environmental law centres**) can also provide assistance.

You should think carefully about what **specialist input** you might need to support your case. This might include hiring a professional to give evidence on an aspect of your case (eg, a traffic engineer or landscape architect).

If you have limited resources, it may be most beneficial to focus on obtaining specialist input to support your case.

Costs

The cost of lodging most appeals with the Environment Court is $511.11 GST inclusive. This is the only court fee payable – there is no hearing or mediation fee. The Registrar of the Environment Court has the power to waive, reduce or postpone the payment of a fee if the person is unable to pay the fee, or where the proceeding concerns a matter of public interest. Details of fees and how to apply for waivers can be found on the Environment Court website www.justice.govt.nz/courts/environment-court.

There are also a number of ongoing costs you should consider. They can include lawyers' fees, expenses in obtaining and preparing evidence, travel costs to get to hearings or mediation meetings, and the possibility that you will need to take time off work to attend these. Some costs may be reduced if you join with other people in bringing your case to the Court. You should also find out whether you are eligible for any financial aid (for instance, from the **Environmental Legal Assistance Fund** which is administered by the Ministry for the Environment. For more information about this fund, visit: www.mfe.govt.nz/withyou/funding/ela.html

If you decide to bring an action, there is a risk that costs might be awarded against you if you are unsuccessful. An award of costs can be made against you in a variety of circumstances and can be enforced by the District Court. This might occur where unnecessary delays are created for the Court or other parties because you do not meet deadlines, or where you withdraw your case before a hearing which the other party has already incurred preparation costs.

However, the Court usually prefers that parties pay their own costs, and it is not automatic that the successful party is awarded costs. Sometimes, the Court may even award costs in favour of an unsuccessful party, where it considers this to be merited.

In some cases, an order may be sought from the Environment Court for a **security for costs**. This only occurs if there is doubt about whether an appeal has been lodged fairly. If a security for costs is granted, the person making the appeal has to prove that they have money to pay for any award of costs if they lose the appeal. The Environment Court does not have to order a security for costs just because one is sought and will make its decision after taking into account the interests of all sides involved in the appeal.

For more information about costs and the Environment Court see 'An Everyday Guide to the RMA' booklet *6.3 The Environment Court: Awarding and Securing Costs*.

How do I appeal?

Proceedings begin in the Environment Court once someone has correctly lodged the notice of appeal or application with the Registrar and paid the **filing fee**. Appeals cannot be lodged with the court on applications which have been decided by boards of inquiry or the Environment Court instead of the local council. Any appeal on these decisions must be made to the High Court and can be on points of law only.

For decisions issued by a local council, you can appeal if you:

- were an applicant for a resource consent
- made a submission on a resource consent application or designation
- made a submission on a proposed plan
- have been issued with an abatement notice.

The RMA restricts **trade competitors** from becoming involved in the appeal process at the Environment Court. This is to ensure that the RMA is not used as a means of allowing one business to lodge appeals against another business purely to get a commercial advantage. This is quite a complex part of the RMA

and if you think that this may apply to you, then you will need to get legal advice.

To lodge an appeal, you or your representative must sign the **prescribed form** and include a copy of the appeal or application. You must lodge these with the correct office of the Environment Court, and also with the council that made the decision and any submitters on the application, within the time frame specified by the RMA. This is referred to as the council being **served**.

Refer to the Practice Notes of the Environment Court before lodging any proceedings. These Practice Notes give you a guide to the practice and procedure of the Environment Court. You can find the Practice Notes on the Ministry of Justice's website: www.courts.govt.nz/courts/environment-court

You should also refer to the Resource Management (Forms, Fees, and Procedures) Amendment Regulations 2006 for the correct form for your proceedings. These forms are available on www.mfe.govt.nz

You must provide all the **details** required on the prescribed form. In particular, you must clearly state the reasons for your appeal, including the parts of the decision you oppose and why, and what outcome you seek. The form also specifies the **documentation** that needs to be included with your notice of appeal; for example, a copy of the decision that you are appealing, and any submissions you made during the council process. If you do not provide everything that is required, your appeal may not be lodged and it may be sent back to you for more details.

You must also comply with any **time limits** for bringing proceedings (see below), and make sure all the relevant parties have been sent a copy of your appeal. If you miss the deadline for lodging your appeal it is possible to apply to the Environment Court for a **waiver** of the time requirement. This will only be granted if the other parties give their consent, or if the Court considers that other parties will not be disadvantaged.

Deadlines for lodging appeals

Appeals against a council decision on a **resource consent**, or against a **requiring authority decision on a designation**, must be lodged with the Environment Court Registrar, and served on the relevant council, within **15 working days** of receiving notice of the decision. A copy of the notice of appeal must also be served on anyone who made a submission regarding the application, and on the applicant or requiring authority if you were a submitter. This must be done within **five working days** of the appeal being lodged with the Environment Court. You will then need to provide the Registrar with the names and addresses of these people.

An appeal against an **abatement notice** must be lodged with the Environment Court and served on the council within **15 working days** of you being served with the notice.

An appeal against a decision on a proposed **plan or policy statement**, including appeals concerning **designations** contained in a proposed plan, must be lodged with the Environment Court within **30 working days** of receiving notice of the decision, and also served on the council (and the requiring authority where applicable) within this time. If the appeal relates to a **regional coastal plan** the Minister of Conservation must also be served with the notice. In either case you must provide a copy of the notice to every person who made a submission relating to the subject matter of your appeal. This must be done within **five working days** of your appeal being lodged.

What if I want to become involved in a case?

The RMA provides for the following people to become a party, or to appear in proceedings before the Environment Court, even if they did not lodge an appeal:

- the Minister for the Environment
- a local authority
- a person who has an interest in the proceedings that is greater than the public generally (excluding any person or business who may be a trade competitor and is acting to prevent the applicant from engaging in trade competition)
- a person who made a submission about the matter.

To become a party you need to give notice to the Environment Court, and to the other parties, within **15 working days** after the deadline for lodging an appeal.

What happens next?

Shortly after being lodged with the Registrar, appeals and applications are shown to an Environment Judge. The Judge will determine how your case will be managed, make suggestions about whether the parties should consider mediation and/or deal with other preliminary issues such as the need for a priority hearing.

The Registrar will fix a time and place for any conferences or hearings that may follow, and all parties will be given notice of this.

The scheduling of your case for a hearing will depend on factors such as the complexity of the issues, the number of witnesses, and the urgency of the matter. In general, the Court hears proceedings in the order in which they were lodged. If you want your case to be heard earlier, you can apply for a priority fixture. You will have to show that this is necessary for the public interest, or in the interests of justice (for instance, in some situations, a delay would negate the whole point of the proceedings).

It is important that you (or your representative) attend all the meetings, conferences and hearings scheduled by the Court. If you do not, then you risk having your case dismissed.

Rather than going straight into the hearing process, you should consider sitting down with the other party (or parties) to discuss the issues and try to resolve the matter. The Court's **mediation** process is voluntary, but is generally strongly encouraged. The solutions discussed between you and the other parties in the case are confidential and will not prejudice the final outcome. This means that if the case proceeds to a hearing, the Judge or Commissioner will not know what took place during the mediation conferences and so this will not affect their final decision.

For mediation to go ahead, all parties must agree to enter the process. The Court will then provide a commissioner as part of its free mediation service (although you can also arrange your own mediator, at your own

cost). For more information about the process, see 'An Everyday Guide to the RMA' booklet *6.2 You, Mediation and the Environment Court*. You should also refer to the Environment Court's Practice Notes.

Mediation has high success rates. It is often a very good opportunity to define the issues that concern all parties, and sometimes to resolve differences. It is also generally cheaper and quicker than a hearing, and you do not need to have legal representation at the conferences. It should be remembered that it is an alternative, not a replacement for Court adjudication.

Case tracking system

The Court manages the flow of cases through a case tracking system. Each track is designed to provide the level of judicial and administrative oversight that's appropriate to the case. The presiding Judge will assign your case to a specific track, and a case manager notifies you of this in writing. There are three distinct management tracks:

Standard

This management track will include most appeals, non-urgent enforcement proceedings and other miscellaneous proceedings. The Court will typically issue standard directions to the parties, with an emphasis on avoiding unnecessary Court appearances at the interlocutory stage and a hearing within six months of commencement.

Complex

This applies to more complex proceedings – that is, most plan appeals and some section 120 appeals. The essential feature is that cases or sets of related cases will be managed on an individual programme as determined by the presiding Judge.

Parties on-hold

Cases will be placed on this track in circumstances where parties are not actively seeking a hearing, for example if they are wanting to negotiate or try mediation.

The Court keeps up-to-date with the progress of a case through several mechanisms, including **callovers**. At these 'housekeeping' meetings, you have the chance to inform the Court about the status of the proceedings; alternatively, proceedings can be **withdrawn** or consent orders finalised if the parties have reached a **settlement**. You can also seek directions in preparing for a hearing,

including dealing with preliminary questions, timetables for delivery of evidence, and the scheduling of the hearing. During the case management stage, you should be careful to lodge and serve a statement specifying what statements or facts in the council's or requiring authority's decision you admit. If any party is required by another to prove undisputed facts, this will be relevant in fixing an award of costs.

Judicial conferences are similar to callovers and are used by the Court to discuss the key issues of the case, as well as to make decisions on timetables and other details. Sometimes these are conducted through a conference phone call with all the parties.

You, the other parties, or the Court can request a **pre-hearing conference**. These are used to ensure that proper preparations are made for a fair, orderly and efficient hearing. Directions may be given about the disposal of preliminary questions, the delivery of statements of evidence, and the time and duration of the hearing. If you request a conference, you should state what you would like it to consider. Anyone who intends to take part in the hearing should attend or be represented by someone who is familiar with the nature and content of their involvement.

The Court may also direct that parties periodically provide reports on the status of proceedings, to check that progress is being made. This is often used as an alternative to a callover.

Appeal hearings: process and protocol

The Environment Court is a formal setting, and so can sometimes seem impersonal and intimidating. The more you understand what is happening, the better your experience will be.

Each court and judge has slightly different ways of organising appeals, holding hearings and exchanging evidence, and also different responses to tikanga Māori.

> **Make sure you understand any instructions about timetables, rules for exchange of evidence, and requirements for translators that you are given at mediation sessions, callovers and judicial conferences. These are seldom flexible without good reason and good notice.**

How are hearings run in the Environment Court?

The Environment Court has some flexibility as to how appeal hearings are run. For example, the Court might decide to hear two or more proceedings together if they relate to the same subject matter.

In general, the Court will ask the person who lodged the appeal to state his or her case and then give evidence to support it. This is usually in the form of reading a typed statement, although the Court may require evidence to be given orally by question and answer. The parties that support the appellant might be asked to present their submissions at this stage.

The Court can then ask the respondent to present their case. The other parties who have indicated that they would like to appear against the appellant will also have their chance to do so. The appellant may then have the opportunity to reply to matters raised by the other parties. New material cannot be introduced at this stage, and it is only an opportunity for response, not for restating your case.

Each party can ask relevant questions of those giving evidence for other parties. This is called cross-examination. The Court itself can also ask questions at any stage of the hearing.

What can be used to support my case?

Because the Environment Court generally re-hears all matters considered by the council, you should present to the Court all material which went to the council. The following are terms that may be used to describe what you can use in presenting your case.

- **Submissions:** legal arguments that are not given under oath. These do not need to be written, but written submissions may be more convenient for the Court.
- **Evidence:** factual information or expert opinion given under oath by people with relevant qualifications, experience and knowledge. Witnesses may be cross-examined. Evidence must be in writing and should be clear and concise.
- **Exhibits:** documents such as photographs, maps or plans included in evidence. If you quote or refer to documents in your evidence, you should provide original copies.

» **Expert witnesses:** may be used to give evidence at the hearing. Expert evidence is given on such matters as noise, traffic, public health, Mā ori cultural matters, and ecology, amongst others. Experts have a code of conduct, which is set out in the Environment Court's Practice Notes.

Environment Court to have regard to decision being appealed

The Environment Court must have regard to the decision that is being appealed. The Court is given explicit powers to accept evidence that was submitted at the consent authority hearing and to direct how evidence is to be given to the Court. This enables the Court to take evidence as read.

How should I conduct myself in Court?

If you choose to present your own case to the Environment Court there are some protocols you should follow leading up to and during the hearing. The Environment Court Practice Notes can help you prepare.

Unless the Court directs otherwise, you must exchange copies of all evidence with every other party no later than **five working days** before the hearing, or let them know where the evidence can be found if it is not practical to provide a copy. If this does not happen, the hearing can be adjourned and you may have to pay costs. You must also provide four copies of your evidence to the Environment Court.

The Court prefers that, if required, any witnesses are **summoned** by parties no later than **10 working days** before a hearing. Leave will need to be sought to call the witness and failure to comply will need to be explained. Leave may be refused.

The following are some points to consider when preparing and presenting your case.

Prepare written statements

While it is possible for the Court to hear oral evidence, it is usually taped, translated (if needed) and transcribed so the Court has a permanent

record. This means there will be a delay whilst the transcriptions are circulated before the next part of the hearing.

Inform the Court of any special circumstances

An example of special circumstances may be that you need to use te reo Māori in your evidence. You would need to explain this to the Court before the hearing so an interpreter can be arranged. Be aware that the Court will require translation as your witness speaks and this can be very distracting for the speaker. Sentences and flow will be broken.

Your case may also be heard on marae or in a place other than the Court, but you will need to get the agreement of the other parties and make your request to the Court well in advance for this to occur.

Study the case law

You should carefully study the case law related to your own situation. Some knowledge of the findings of previous cases can help you focus your own case.

Introduce your case

You may only have one opportunity to address the Court. You will be expected to concisely state your case at the outset. You should outline the circumstances of the case and the nature of the evidence to be called. You will need to state the resource management factors relevant to your case, and the legal principles upon which you rely.

Address the Court appropriately

Judges are referred to as 'Your Honour'. The Commissioners are addressed as 'Mr Commissioner' or 'Madam Commissioner'.

Follow the instructions or advice given by the Court

During the hearing, you should follow any advice given to you by the Court or its officers. They will try to ensure everyone understands what is going on.

Organise your evidence

Your case should tell a story. You should set out your witnesses like chapters and avoid duplication. You should keep your presentation focused and uncluttered, and avoid repetition. It is frustrating for the Court and the other parties if you include material that is not directly relevant.

Any physical evidence (known as exhibits), including photographs and other visual presentations, should be presented to the Court in a practical and manageable form. For example, photographs should be separately mounted and identified. A bundle of documents, or a series of photographs, should be presented in a folder or booklet. Make sure your physical evidence is accompanied by clear information – in the case of a photograph, this would include the date and time taken, the make of camera and the lens size.

In preparing for the hearing, you are expected to cooperate with the other parties by providing an agreed statement of facts and issues, and an agreed folder of documents.

Choose your witnesses carefully

You need to consider how each witness helps your case. If a witness does not add anything to your case, then leave them out.

Brief your witnesses

Make sure your witnesses are clear about the key issues in your case, and how you want them to contribute to it. Sometimes, hearings can be stressful and emotions can run high. You, and your witnesses, should try not to be distracted by criticising other witnesses or the other parties. Focus on ensuring that your own case is presented clearly to the Judge and Commissioners.

Speak clearly

When you read written statements, you should speak clearly and at a speed that allows the Court to take notes. Practise reading aloud your written statements before the hearing starts.

Help the Court to understand

You should explain and provide details about the evidence that you present to the Court. For example, the Court will want to try to define the boundaries of the areas you talk about. Any maps you can produce which help the Court to understand the physical dimensions of an area will help your case.

If you do refer to exhibits such as maps, remember to give helpful verbal directions so your evidence makes sense to the Court during and after the hearing. Try to use phrases such as 'in the top left corner of exhibit 3'.

As English is the language used by the Court, it is important that you carefully explain any non-English words that you use in your written statements and verbal answers. This is so the Court understands your interpretation and does not substitute one of their own or one from another witness.

After the hearing – the decision!

It is generally inappropriate to communicate with the Court about the details of your case after the hearing is concluded and before the decision is issued.

Decisions of the Environment Court are almost always **reserved**. That is, written judgments are delivered some time after the hearing, rather than being given orally 'on the spot'. This is because the matters before the Court are often complex and of some public importance. The Court must give reasons for the decision it makes, and therefore the preparation and drafting of the decision will take some time. You would normally expect to receive a decision within three months after the hearing concludes. Sometimes it can take longer.

Decisions on costs

The successful party can apply to the Environment Court for an award of **costs**. The Judge will then need to decide whether money should be paid to the successful party by the other party. This would help pay for the expenses they incurred from their involvement in the case. The Judge will consider a number of factors before issuing a judgment indicating the amount, if any, that must be paid.

If the party who has been ordered to pay costs refuses to do so, the award of costs can be enforced by the District Court.

Can I appeal the decision of the Environment Court?

The RMA provides for appeals to be made to the High Court on points of law only; for example where a party questions whether the Environment Court has interpreted legislation correctly. **It is strongly recommended that you retain the services of a lawyer if you wish to make an appeal.**

Complaints process

If you want to lay a complaint about an Environment Judge or Environment Commissioner, you must do so in writing. A verbal complaint will not be accepted. Send your complaint, setting out your concerns and what remedies you seek, to the Principal Environment Judge, PO Box 7147, Auckland, or the Judicial Conduct Commissioner. Complaints need to specify the name of the judicial officer, the complainant's name and the actual conduct complained of. Further information can be provided by the Commissioner's Office.

Contact:

PO Box 2661

Wellington

Phone: 0800 800323

Email: judicialconduct@jcc.govt.nz

Contacts

For more information, or to lodge a case in the Environment Court, contact the Court Registry closest to you.

Wellington Registry

The Deputy Registrar

5th Floor, District Court Building, 49 Ballance Street,

PO Box 5027, Wellington, New Zealand

Phone (04) 918 8300 Fax (04) 918 8303

Auckland Registry

The Deputy Registrar

8th Floor, Justice Building, 3 Kingston Street,

PO Box 7147, Wellesley Street

Auckland, New Zealand

Phone (09) 916 9091 Fax (09) 916 9090

Christchurch Registry

The Deputy Registrar

83 Armagh Street, (Corner Armagh and Durham Streets),

PO Box 2069, Christchurch, New Zealand

Phone (03) 962 4170 Fax (03) 962 4171

Disclaimer

Although every effort has been made to ensure that this guide is as accurate as possible, the Ministry for the Environment will not be held responsible for any action arising out of its use. Direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

Second edition published in November 2009 by the
Ministry for the Environment
Manatū Mō Te Taiao
PO Box 10362, Wellington, New Zealand

ISBN: 978-0-478-33236-0 (print)
978-0-478-33237-7 (electronic)
Publication number: ME 967

For more information on the Resource Management Act:

www.rma.govt.nz

For more information on the Resource Management Act:

www.rma.govt.nz

Printed on process chlorine free 100% recycled paper using vegetable inks

New Zealand Government