



## You and the Environment Court

### 4.1



## 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. If the reader is uncertain about issues raised in this guide then direct reference should be made to the Resource Management Act and further expert advice sought if necessary.

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# Contents

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Introduction	5
About this guide	5
About the everyday guides	6
What is the role of the Environment Court?	7
1. Appeals	7
2. Hearing and deciding significant applications	7
3. Enforcement and other applications	8
Who is involved in an Environment Court case?	10
What does the Environment Court consider?	11
Council decisions	11
Decisions of requiring authorities	12
Actions involving other legislation	13
Applications	14
Points to consider before going to the Environment Court	15
Time	15
Seek professional advice	15
Filing fees	16
How do I appeal?	18
Before lodging an appeal	18
What you have to do	19
Can I become involved in another person's case?	21
Fee	21
What happens after an appeal is lodged?	22
Hearings	22
Mediation	22
Expert witness conferencing	23
Call-overs	24
Judicial conferences	25

Pre-hearing conferences	25
Progress reports	25
Appeal hearings: process and protocol	26
Use of audio-visual link (AVL) technology	26
What happens during a hearing?	26
What can I use to support my case?	27
Hearing process and rules	28
After the hearing – the decision	30
Complaints process	31
Contacts	33
Glossary	34

# Introduction

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The Resource Management Act 1991 (RMA) sets out the framework for regional and local councils to manage activities and effects on the environment. The overall purpose is to promote sustainable management of resources. This involves considering how our activities affect the environment now and in the future.

The RMA also enables councils to regulate land use and the provision of infrastructure, which are essential parts of New Zealand's planning system.

The RMA means that regional and local councils set rules and requirements to manage activities ranging from building houses, clearing vegetation, moving earth, taking water from a stream, or burning rubbish. The purpose of the rules are to ensure activities won't harm our neighbours or communities, or damage the air, water, soil, and ecosystems that we and future generations need to survive.

The RMA allows you to participate in certain decisions about the environment at your local council, and in some instances allows you to appeal these decisions to the Environment Court.

## About this guide

This guide is the 11th in a series of guides called An Everyday Guide to the Resource Management Act (see more details about the series below).

It explains:

- the role of the Environment Court
- who's involved in the court's hearings
- why you may want to take proceedings to the 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.

The guide has a glossary of RMA terms at the end. Words defined in the glossary are coloured **brown**.

# About the everyday guides

This guide is one in a series of 13 called An Everyday Guide to the Resource Management Act. The series is intended to help people work with their councils. If you're dealing with the Environmental Protection Authority (EPA), a board of inquiry, or the Environment Court (see the glossary to learn more about these), you might need more technical advice from the EPA ([www.epa.govt.nz](http://www.epa.govt.nz)) or the Environment Court ([environmentcourt.govt.nz](http://environmentcourt.govt.nz)).

For more information about specific parts of the RMA process, see the [full set of guides](#) on our website.

## MORE INFORMATION

- [Appearing at a hearing about a proposed plan or resource consent](#)
- [You, mediation and the Environment Court](#)
- [The Environment Court: Awarding and securing costs](#)

# What is the role of the Environment Court?

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

## 1. Appeals

When someone disagrees with a decision (usually by a local council) that affects the environment, they may be able to **appeal** to the Environment Court. A wide range of appeals can be lodged with the Environment Court. These include appeals on:

- **resource consents**
- proposed **district** and **regional plans** or plan changes
- proposed **regional policy statements**
- **designations**
- **heritage protection 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 report of a special tribunal), although the court is not bound by this.

If the council has followed a **streamlined** or **freshwater planning process**, the court's role will be different from its standard role, and the rights of appeal will be more limited.

## 2. Hearing and deciding significant applications

Local councils make most decisions under the RMA, and the vast majority of decisions are on 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, if the applicant and the council agree. Or the **Minister for the Environment** may decide that the application concerns a **proposal of national significance**, and can refer it to the Environment Court for a decision.

## Direct referrals

Matters that can be directly referred to the court are resource consent applications, applications to change consent conditions, and notices of requirement.

For a **direct referral**, the applicant must apply to the council within five days of the time that submissions close, and the council will decide whether to grant the request. Although these applications may not be of national significance, they are generally so complex or large-scale that the council's decision would likely be appealed and they would end up in the Environment Court anyway.

When the Minister for the Environment refers a proposal of national significance to the Environment Court for a decision, many factors are considered first. These factors include whether the proposal is of widespread public concern or interest, or whether it involves a significant use of natural and physical resources and/or is likely to affect a structure, feature, place or area of national significance.

## 3. Enforcement 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.

It may hear an appeal from someone who has received an **abatement notice** from the council, warning them that they are contravening (breaching) the RMA and requiring them to take a certain action or to stop an action.

Sometimes, the court receives an application for a declaration (a particular type of decision). For example, if there are different views on plan rules and how to interpret them or if someone has breached the RMA's restrictions on participation by trade competitors.

The court can hear a challenge from a landowner that a plan provision will mean they can no longer reasonably use their land. The court can direct that the rule is removed or changed or the council acquire the land under the Public Works Act 1981.

The court can hold an inquiry into the report of a special tribunal on a water conservation order. The court receives and hears submissions, then recommends to the Minister for the Environment whether to accept or reject the tribunal's report.



## Powers of the Environment Court

When fulfilling these three functions, 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 (suspend) or confirm abatement notices
- make or decline to make declarations, and make or decline to make enforcement orders
- **award costs** to one or other of the parties involved
- direct the **appellant** (the person lodging the appeal) to make a deposit to pay for legal costs in case they lose the appeal.

## Court locations

The Environment Court registries are in Christchurch, Wellington, and Auckland. However, to ensure that it is accessible, the court holds sittings as required throughout the country. These usually take place as close as possible to the site that the case is concerned with.

For full details, see **Contacts**.

# Who is involved in an Environment Court case?

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- The court is made up of Environment Court Judges and Environment Court **Commissioners**. An Environment Court usually consists of at least one Judge and one or more Commissioners.

Commissioners have knowledge and experience in areas such as local government, resource management, environmental science, and the Treaty of Waitangi.

The Chief Environment Court Judge may give an Environment Court Commissioner the power to hear and decide **proceedings**.

Read more about the Judges on the Environment Court website: [www.environmentcourt.govt.nz/about/judges/](http://www.environmentcourt.govt.nz/about/judges/).

- The registrar and his or her staff manage the administrative functions of the court. They may advise 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, group or entity whose decision or actions the appellant is appealing against.
- The media and the public can attend **hearings**, but not **mediation** sessions or private hearings of the evidence. Sometimes the court may order not to publish the evidence.
- Cases in the 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, the respondent in an appeal against one of their decisions, or a party to a project of national significance or a **direct referral** application. When an application is directly referred to the court, the local authority must give the court certain assistance.
- The **Environmental Protection Authority (EPA)** helps the Environment Court manage applications of **national significance** that are referred by the Minister for the Environment.

# What does the Environment Court consider?

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## Council decisions

### Resource consents

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 (except for **deemed permitted boundary activities**)
- 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 (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 their objection to the Environment Court.

### Planning matters

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, if the council has followed the **standard plan-making process** (and not used a **streamlined** or **freshwater process** and the matter is not a proposal of national significance). Your appeal must be limited to the subject matter of your original submission. You can also appeal a council's decision to reject your request for a change to a plan or policy statement.

### Abatement notices

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 (suspension) of the abatement notice. If the court orders a stay, you will not have to comply with the notice while your appeal is being resolved. If the court has not granted a stay, you must comply with the notice. It is an offence not to comply, and you could be prosecuted through the District Court.

# Decisions of requiring authorities

## Designations

The RMA allows for 'requiring authorities' (a Minister of the Crown, local authority, or an approved network utility operator such as an electricity operator) 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 the local council's district plan and known as a 'designation'.

A requiring authority that wants a designation must first give the council a **notice of requirement**. The council may decide to:

- **publicly notify** the application, or
- **limited notify** the application to those people it considers to be affected, or
- not notify the application.

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.

If the Minister for the Environment considers that a notice of requirement is a matter of national significance, it can be directed to a **board of inquiry** or the Environment Court to make a decision.

The requiring authority can also apply to the council to refer the designation application directly to the Environment Court (a 'direct referral'). If this occurs, the court makes the decision on the designation. Appeal of this decision is to the High Court and only on points of law, rather than on the environmental matters at issue.

In the case of the designation being processed at council level, 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 to modify in a proposed plan.

Submissions can be made to the council about the plan, including any designations it contains. 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. Certain restrictions apply on the appeals if there was a **streamlined planning process** directed by the Minister.

#### MORE INFORMATION

- [The designation process](#)

## 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**

Public Works Act 1981

**b. Appeals about archaeological sites**

Relevant legislation: Heritage New Zealand Pouhere Taonga Act 2014

**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, councils or individuals can make applications to the Environment Court. The most common applications are declarations and enforcement orders.

The Environment Court can be asked to define or clarify a matter relating to the operation of the RMA. This is called a declaration.

Here are some examples:

- A council may apply for a declaration that an activity is not allowed by the RMA or by a council plan.
- Individuals can seek a declaration, such as in cases where they consider that they have existing rights to use an area. The court can declare that a person must adopt the best option to avoid or minimise adverse effects on the environment.
- Individuals can seek a declaration about the work of a council – for example, that a proposed provision in a plan is inconsistent with a regional policy statement.

## Enforcement orders

An **enforcement order** is used to ensure a person complies with any rules or orders under the RMA. It is generally used after other measures haven't worked. The Environment Court can order that a person does not start, or does not continue, an activity that it considers will have an adverse effect on the environment.

The court can also require that any harm be remedied or mitigated, and order reimbursement for 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 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.<sup>1</sup>

It is an offence for a person not to comply with an enforcement order.

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<sup>1</sup> With the exception that an enforcement order can only be made against an instrument of the Crown if it is a Crown organisation and the enforcement order is brought by a local authority and the order is made against the organisation in its own name.

# Points to consider before going to the Environment Court

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Before bringing a case to the Environment Court, there are a number of things you should think about.

## Time

It now takes significantly less time to resolve an appeal in the Environment Court, but it can still be a long process. The court regulates its own proceedings and timeframes but must do so in a way that promotes timely and cost-effective resolution.

Many matters are now resolved through negotiation or **mediation** and do not require a formal court hearing. But it still takes time to reach mediated settlements, and it might not be possible to resolve all matters through these options.

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. Wasting the time of the court or other parties is frowned upon and may mean you have to pay costs. You should provide information promptly or as the court directs.

## Seek professional advice

You don't have to be represented by a professional when presenting your case to the Environment Court, but a resource management professional (eg, a planner or a lawyer) can pull various aspects of your case together. They can talk to you about the likely success of your appeal, based on previous court decisions and the law. This is important, because the court can order parties to pay costs (see below).

A professional can also ensure that you follow the right procedures, including presenting your action (your case or appeal) correctly and notifying the right people, and that you exchange evidence with the other parties. Community law centres (and, in some areas, environmental law centres) can also help.

You should think carefully about any 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).

## Filing fees

Table 1 sets out the filing fees for lodging most appeals and interlocutory applications (applying for decisions secondary to the main claim) or with the Environment Court.

There are also scheduling fees and hearing fees that apply to most appeals.

**Table 1: Filing fees for the Environment Court**

Application/appeal	Fee
Filing a notice of appeal	\$660
Commencing any other proceeding (except for waivers and directions under section 281 or giving notice of desire to be heard under 291(4))	\$275
Filing for an interlocutory application	\$220
Filing notice to become a party to a proceeding under section 274 (except under sections 87G, 149T, 198E or 198K)	\$110
Scheduling (except for interlocutory applications where there is no fee)	\$385
Hearing fee (interlocutory) for each half-day or part half-day after the second day	\$385
Hearing fee (any other application) for each half-day or part half-day after the first half-day	\$385

## Other costs

There are also a number of ongoing costs you should consider. They can include:

- lawyers’ fees
- costs of obtaining and preparing evidence
- travel to hearings or mediation meetings
- taking time off work to attend meetings.

If a court mediator is appointed, the process will be free. But if the parties agree to engage another mediator, the parties will need to meet the costs.

You can reduce some costs if you join with other people in bringing your case to the court and agree to share them.



## Environmental Legal Assistance Fund

Find out whether you are eligible for any financial aid. One source is the Environmental Legal Assistance Fund, which is administered by the Ministry for the Environment. It assists not-for-profit groups engaged in proceedings of the Environment Court and boards of inquiry on some matters.

### MORE INFORMATION

- [Environmental Legal Assistance Fund](#)

## If costs are awarded against you

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 if you:

- cause unnecessary delays for the court or other parties because you do not meet deadlines
- withdraw your case before a hearing where the other **party** has already incurred preparation costs.

However, the court usually prefers parties to 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.

## Security for costs

In some cases, the Environment Court may be asked to make an order to secure costs before allowing an appeal to proceed. If the court grants a **security for costs**, 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 court does not have to order security for costs just because it receives a request. It will make its decision after taking into account the interests of all sides involved in the appeal.

### MORE INFORMATION

- [The Environment Court: Awarding and securing costs](#)

# How do I appeal?

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Proceedings begin in the Environment Court once someone has correctly lodged a notice of appeal or application with the registrar and paid the filing fee.

## Before lodging an appeal

Before you lodge your appeal you should check that you have a right of appeal to the Environment Court.

You cannot appeal on applications which have been decided by **boards of inquiry** or the Environment Court, rather than by the local council. Any appeal on these decisions must be made to the High Court and can be on points of law only. Freshwater and streamlined planning processes also have limits on appeals.

You can appeal decisions by a local council, if you:

- were an applicant for a **resource consent** (except in relation to deemed permitted boundary activities)
- made a submission on a resource consent application or **designation**
- made a submission on a proposed plan under the **standard plan-making process**
- have received an **abatement notice**.

The RMA restricts trade competitors from becoming involved in the appeal process at the Environment Court. This is to ensure that one business does not use the RMA to lodge appeals against another one, purely to get a commercial advantage. This is quite a complex part of the RMA and if you think it may apply to you, you will need to get legal advice.

### MORE INFORMATION

Before you lodge your appeal, see the [Practice Note](#) of the Environment Court. This is a guide to the court's practice and procedure.

# What you have to do

To lodge an appeal, you or your representative must:

1. Sign the correct form.
2. Send a copy of the appeal or application to:
  - a. the **correct office of the Environment Court**
  - b. the council that made the decision (this is referred to as the council being served)
  - c. any submitters on the application.
3. Meet the deadline specified in the RMA (see table below).
4. Pay the required filing fees or apply to have the required filing fee waived.

## Forms

You must provide all the details required on the form. In particular, 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 lists the documents you need to include. 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.

### DOWNLOAD FORMS

- <https://environment.govt.nz/acts-and-regulations/acts/resource-management-act-1991/rma-forms/>

## Deadlines

You must comply with any deadlines. If you miss the deadline for lodging your appeal, you can 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.

**Table 2: Deadlines and actions for lodging common types of appeals**

Type of appeal	Lodge with	Other actions	Deadline
Against a council decision on a resource consent	Environment Court registrar	Serve notice on the court and on the relevant council	Within 15 working days of receiving notice of the decision
Against a requiring authority decision on a designation		Provide a copy of the notice to anyone who made a submission and give the court registrar the names and addresses of these people	Within 5 working days of lodging the appeal with the Environment Court
Against a decision on a proposed plan or policy statement, or against a decision of a requiring authority or heritage protection authority	Environment Court registrar	Serve notice on the council (and the requiring authority where applicable)  Provide a copy of the notice to everyone who made a submission about the subject matter of your appeal	Within 30 working days of receiving notice of the decision  Within 5 working days of lodging your appeal
Against a regional coastal plan	Environment Court registrar	Serve notice on the Minister of Conservation and on the relevant council  Provide a copy of the notice to everyone who made a submission about the subject matter of your appeal	Within 30 working days of receiving notice of the decision  Within 5 working days of lodging your appeal

# Can I become involved in another person's case?

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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
- the Attorney-General representing an aspect of the public interest
- 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 (and is not excluded by the anti-trade competition provisions of the RMA).

To become a party you need to give notice to:

- the Environment Court, the relevant local authority, and the appellant (or person who commenced the proceedings) within 15 working days after the appeal period ends
- other parties within five working days of the deadline for joining the appeal.

## Fee

There is a filing fee of \$110 unless you are joining an appeal under sections 87G, 149T, 198E, and 198K of the RMA (direct referral provisions or proposals of national significance referred to the court).

# What happens after an appeal is lodged?

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Soon after you lodge an appeal or application with the registrar, it goes to an Environment Court Judge. The Judge will determine how to manage your case.

The registrar fixes a time and place for any conferences or hearings, and notifies all parties about this.

Below are the different ways the court can manage a case.

## Hearings

The decision to have 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 (received by them). 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).

### SHOW UP

You (or your representative) must attend all the meetings, conferences, and hearings that the court holds. If you do not, you risk having your case dismissed.

Rather than going straight into the hearing process, the court may direct you to participate in alternative disputes resolution (such as mediation) with the other party (or parties) to discuss the issues and try to resolve the matter.

## Mediation

The court may direct **mediation** at any time. Those running the sessions will be either:

- a member of the court (eg, an Environment Court Commissioner) as part of its free mediation service, or
- another person (in which case the parties will meet the costs).

The solutions you discuss with the other parties in the case are confidential and will not prejudice the final outcome. This means that if the case goes to a hearing, the Judge or Commissioner will not know what took place during the mediation so this will not affect their final decision. However, parties can agree that if an Environment Court Commissioner is acting as mediator, they can also resume their role in the proceedings if appropriate.

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 is an alternative, not a replacement for court adjudication.

## Expert witness conferencing

Expert conferencing may occur at any stage of a proceeding at the direction of the Court. It is a process in which expert witnesses confer and attempt to reach agreement on issues, or at least to clearly identify the issues on which they cannot agree, and the reasons for that disagreement. Such a conference is a structured discussion amongst peers within a field of expertise which can narrow points of difference and save hearing time (and cost).

The term 'expert' means a person who would be recognised by the court as an expert in his or her field by reason of relevant qualifications or experience. Persons not having such qualifications or experience, and counsel and the parties, will not participate in conferences unless specifically directed by the court.

All experts have a duty to ensure that any conference is a genuine dialogue between them with the aim of reaching a common understanding of the relevant facts and issues. An expert conference is a forum in which to seek technical, scientific, and other professional agreements amongst people holding relevant qualifications or experience.

It is not a forum in which compromise or a mediated outcome between the experts is anticipated.

### MORE INFORMATION

- [You, mediation and the Environment Court](#)
- [Environment Court Practice Note](#)

## CASE TRACKING SYSTEM

The court manages the flow of cases through a tracking system. Each track provides the right level of judicial and administrative oversight for a case. The presiding Judge assigns your case to a specific track and a case manager notifies you of this in writing. There are three tracks:

### 1. Standard

This management track will include most appeals, non-urgent enforcement, and other miscellaneous cases. In its directions, the court will stress the need to avoid unnecessary court appearances before the final decision and a hearing within six months of commencement.

### 2. Priority

This applies to more urgent cases – that is, most plan appeals and some resource consent appeals. The essential feature is that cases or sets of related cases will be managed on a customised programme as determined by the presiding Judge.

### 3. Parties on hold

This track is for when parties are not actively seeking a hearing, for example if they are wanting to negotiate or are to attend mediation.

## Call-overs

The court keeps up to date with the progress of a case in several ways, including meetings known as **call-overs**.

At these ‘housekeeping’ meetings, you have the chance to tell the court about the status of the proceedings. Or, if the parties have reached a settlement, a case can be withdrawn or a consent order finalised.

You can also seek directions in preparing for a hearing, including dealing with preliminary questions, timetables for providing evidence, and the hearing date.

To resolve a case it is important to understand what matters are really in dispute and what matters parties agree on and are not disputing. During the case management stage (after your case has been assigned to a specific track), you may be encouraged to lodge and serve a statement specifying



what statements or facts in the council's or requiring authority's decision you accept and do not disagree with. If any party is required by another to prove undisputed facts, this will be relevant in fixing an award of costs.

## Judicial conferences

**Judicial conferences** are similar to call-overs. The court uses them to discuss the key issues of the case, as well as to decide on timetables and other details. Sometimes this is through a conference phone call with all the parties or via audio visual link.

At mediation sessions, call-overs and judicial conferences...

Make sure you understand any instructions about timetables, rules for exchange of evidence, and requirements for translators. It is not easy to change these without good reason and plenty of notice.

## Pre-hearing conferences

You (or your representative), 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. The court may give directions about the resolution of any preliminary issues that may arise, 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 their case.

## Progress reports

The court may also direct that parties provide reports on the status of proceedings, to check that they are making progress. This is often used instead of a call-over.

# Appeal hearings: process and protocol

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The Environment Court is a formal setting, so it 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. The Court is required to recognise tikanga Māori. You may wish to contact the Environment Court registrar if you want more information.

## Use of audio-visual link (AVL) technology

The Courts (Remote Participation) Act 2010 allows AVL to be used in some court proceedings.

Parties can apply to the court to appear in hearings, mediations, and procedural meetings such as conferences via AVL. A judicial officer or registrar may also consider it appropriate to use AVL.

The practical arrangements for the use of AVL will depend on the number of parties, their location (which may affect the practicality and cost of attendance in person), the issues to be discussed, and the availability of AVL facilities.

## What happens during a hearing?

Environment Court hearings are required to be in public. However, the Environment Court can order that particular evidence can be heard in private or it can restrict or prohibit the publication of evidence. It can do this if it considers there are reasons that outweigh the public interest in having public hearing and publication of evidence.

The Environment Court has some flexibility in managing appeal hearings. For example, it might decide to hear two or more proceedings together if they are about the same issue.

In general, the court will ask the person who lodged the appeal (the appellant) to state their case and then give evidence to support it. Usually, this is in the form of reading a typed statement, although the court may

require you to speak the evidence 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 person whose decision or action the appeal is against (the respondent) to present their case. The other parties who have said 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 that the other parties raise. You cannot introduce new material 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 I use 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.

Here are some 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 always need to be written, and can be spoken. However, written submissions are often more convenient for the court who may require them.
- **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:** people who give specialised evidence at the hearing – for example, on matters such as noise, traffic, public health, Māori cultural matters, and ecology. Experts have a code of conduct, which is set out in the [Environment Court's Practice Note](#).

## Environment Court to have regard to decision being appealed

The Environment Court must have regard to the decision that is being appealed. The court has 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.

## Hearing process and rules

If you choose to present your own case to the Environment Court there are some protocols you should follow before and during the hearing.

To help you prepare, see the [Environment Court Practice Note](#).

### Before the hearing

- 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 to find the evidence if you can't provide a copy. If this does not happen, the hearing can be adjourned and you may have to pay costs.
- You must provide four copies of your evidence to the court.
- The court prefers that, if required, parties call any witnesses 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. The court may refuse leave.

### Prepare written statements

Written statements of evidence will assist the court. Although it is possible for the court to hear spoken evidence, this is usually recorded and transcribed so the court has a permanent record. This means there will be a delay while the transcriptions are circulated before the next part of the hearing.

### Recognising tikanga Māori

If you would like to present your evidence in te reo Māori, you would need to give notice to the court before the hearing, so an interpreter can be arranged.

The court may also hear your case on a marae or in a place other than the court if you request. You will need to get the agreement of the other parties, and make your request to the court well before the hearing.

## Study the case law

**Case law** may provide a useful background to your own situation. Some knowledge of the findings of previous cases can help you focus your own case. Your lawyer should be able to do this preparatory work as part of preparing your case and arguments.

## During the hearing

### Introduce your case

You may only have one opportunity to address the court. You will be expected to state your case concisely at the outset.

- Outline the circumstances of the case and the nature of the evidence you are using.
- State the resource management factors relevant to your case, and the legal principles you are relying on.

### Use the correct forms of address

Refer to Judges as ‘Your Honour’ or ‘Her/His Honour’.

Address the Commissioners as ‘Mr Commissioner’ or ‘Madam Commissioner’.

### Follow the court’s instructions or advice

During the hearing, you should follow any advice from 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. 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.

Present any physical evidence (known as exhibits), including photographs and other visual presentations, in a practical form. For example, mount and identify photographs. If you have a bundle of documents, or a series of photographs, present them in a folder or booklet. Make sure your physical evidence is clear. Maps are an invaluable tool to help the court understand the location of the site relative to other local or broader features and any site details relevant to your case.

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 you present your own case 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 your statements aloud 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 physical boundaries of the areas you talk about. Any maps you can produce which help the court understand the dimensions of an area will help your case.

If you do speak about exhibits such as maps, remember to give helpful explanations 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’.

If languages, other than official New Zealand languages are used in the court, you must carefully explain any words you use in your written statements and spoken answers. This is so the court understands your interpretation or translation, and does not substitute one of their own or one from another witness.

## **After the hearing – the decision**

After the hearing ends, you would normally expect to receive a decision within three months. Sometimes it can take longer.

It is generally not appropriate to communicate with the court about the details of your case after the hearing ends and before the court makes a decision.

Decisions of the Environment Court are almost always ‘reserved’. This means that written judgments are delivered sometime after the hearing, rather than being spoken ‘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 preparing the decision will take some time.

## Decisions on costs

The Environment Court may order costs in favour of any party. If costs are not recorded in the judgment, the successful party can apply to the Environment Court for an **award of costs**. The Judge will then need to decide whether the other party should pay money to the successful party. This would help pay for their expenses from being involved 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 District Court can enforce the award of costs.

## Can I appeal the court’s decision?

Under the RMA you can appeal 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 engage a lawyer if you wish to make an appeal.

## Complaints process

If you want to lay a complaint about an Environment Court Judge or Environment Court Commissioner, you must do so in writing. A verbal complaint (for example by phone) is not acceptable.

Send your complaint, setting out your concerns and what remedies you seek, to:

Chief Environment Court Judge  
PO Box 7147  
Auckland 1141

You can also send a complaint to the Judicial Conduct Commissioner. Complaints need to state the name of the judicial officer, your name and the action or behaviour you are complaining of.

Contact:

Post: PO Box 2661, Wellington 6140

Phone: 0800 800 323

Email: [judicialconduct@jcc.govt.nz](mailto:judicialconduct@jcc.govt.nz)

#### MORE INFORMATION

- [Office of the judicial conduct commissioner](#)



# Contacts

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

## **Auckland Registry**

The Deputy Registrar  
Level 2, Specialist Courts and Tribunals, 41 Federal Street  
PO Box 7147, Victoria Street West  
Auckland 1141  
Phone (09) 916 9091 Fax (09) 916 9090

## **Wellington Registry**

The Deputy Registrar  
5th Floor, District Court Building, 49 Ballance Street  
PO Box 5027, Wellington 6145  
Phone (04) 918 8300 Fax (04) 918 8303

## **Christchurch Registry**

The Deputy Registrar  
Level 1, District Court Building, 282 Durham Street  
PO Box 2069, Christchurch 8140  
Phone (03) 365 0905 Fax (03) 365 1740

The Environment Court: [www.courts.govt.nz/courts/environment-court](http://www.courts.govt.nz/courts/environment-court).

# Glossary

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The purpose of this glossary is to assist with understanding the meaning of terms used in this guide. Some of these terms have specific legislative definitions in section 2 of the RMA.

<b>Abatement notice</b>	A request for compliance with the RMA within a specified time. Only councils and the EPA can issue these notices, which are used to get someone to stop or to start doing something.
<b>Appeal</b>	Request for a decision to be changed, predominately to the Environment Court.
<b>Appellant</b>	Person or group making an appeal.
<b>Award costs</b>	The Judge orders one party to make a payment to another party.
<b>Board of inquiry</b>	A special decision-making body appointed by the Minister(s) to hear and decide a proposal of national significance.
<b>Call-over</b>	Meeting to discuss pre-hearing matters.
<b>Case law</b>	Law established from the outcome of former cases.
<b>Commissioner</b>	A person appointed by a council to carry out statutory decision-making duties on the council's behalf, or to serve as an independent adviser to the council in the making of those statutory decisions.
<b>Deemed permitted boundary activity</b>	Activities which infringe certain types of rules in district plans impacting site boundaries but must be approved by a council if there is written approval by the relevant neighbours.
<b>Designation</b>	Provisions in a district plan that provide notice to the community of an intention by the council or a requiring authority to use land in the future for a particular work or project.
<b>Direct referral</b>	A process where, at the request of the applicant, the council decides that the Environment Court will determine applications without the need for a council hearing and decision first.
<b>District plan</b>	Plans prepared by city or district councils to help them carry out their functions under the RMA.

<b>Enforcement order</b>	A way of getting someone to comply with the RMA. It differs from an abatement notice in that anybody (not just the council or the EPA) can apply for an enforcement order against somebody else. These are issued by the Environment Court rather than the council.
<b>Environment Court</b>	A specialist court where people can appeal decisions made by councils under the RMA on a policy statement or plan, or on a resource consent application; or where they can apply for an enforcement order or seek a declaration.
<b>Environmental Protection Authority (EPA)</b>	Receives and processes applications for proposals of national significance under the RMA, and can have a role in RMA compliance and enforcement.
<b>Freshwater planning process</b>	Specific plan-making process councils must use for proposed regional policy statements and regional plans (including plan changes) which relate to freshwater.
<b>Hearing</b>	Gives people who have already written submissions the chance to speak to the decision-maker, about what a council or an applicant is proposing.
<b>Heritage protection order</b>	A provision in a district plan to protect the heritage characteristics of a particular place.
<b>Judicial conference</b>	A meeting of the parties before a Judge to discuss issues in a proceeding. Typically used to expedite a proceeding or facilitate settlement.
<b>Limited notification</b>	A council only notifies people who are affected by a resource consent application or proposed plan or plan change, and only those people can make a submission.
<b>Local authority</b>	Means a regional council or territorial authority (and a council which acts as both a regional and district council).
<b>Mediation</b>	A process to resolve disputes.
<b>Minister for the Environment</b>	The Minister responsible for the RMA with a number of statutory functions under the legislation.
<b>Nationally significant proposal</b>	A proposal that has been deemed to be nationally significant for one or more reasons by the Minister for the Environment (or Minister of Conservation). If a proposal is deemed nationally significant it may then be referral to a board of inquiry or the Environment Court for hearing and determination.

<b>Notice of requirement</b>	A proposal for a designation, which may be notified or non-notified.
<b>Operative plan</b>	A proposed plan will only be 'operative' when the plan is made operative under clause 20 of Schedule 1 of the RMA. This means it has gone through the full plan preparation process and any appeals have been resolved.
<b>Party</b>	A person, group or organisation taking part in an appeal, or other legal proceedings.
<b>Pre-hearing conference</b>	An informal meeting to sort out issues before a hearing.
<b>Proceedings</b>	A case being considered by a court.
<b>Publicly notified</b>	Means that the application or planning matter is described on the council's website and summarised in the newspaper and any person is invited to make a submission on the consent application.
<b>Regional council</b>	Primarily manage resources like the air, water, soils and the coastal marine area.
<b>Regional plan</b>	Can be prepared by regional councils, to help them manage the resources they are responsible for.
<b>Regional policy statement</b>	Must be prepared by all regional councils. They help set the direction for managing all resources across the region.
<b>Requiring authority</b>	An authority (such as a Minister of the Crown, a local authority or a network utility operator) with the power to designate a particular piece of land for certain works or projects.
<b>Resource consent</b>	Permission from the local council for an activity that might affect the environment, and that isn't allowed 'as of right' in the district or regional plan.
<b>Resource Management Act 1991 (RMA)</b>	New Zealand's main piece of environmental legislation. It provides a framework for managing the effects of activities on the environment.
<b>Security for costs</b>	A payment of money to ensure that if a person is unsuccessful in a proceeding, they will be able to pay costs.
<b>Standard plan-making process</b>	The usual process for a council to develop a plan or plan change, involving notifying the public, receiving submissions, and holding hearings.

<b>Streamlined planning process</b>	An alternative option to the standard planning process for a council to prepare an RMA plan or plan change. The proposed RMA plan or plan change must meet certain criteria, and must be directed by the Minister for the Environment (or the Minister of Conservation in the case of a regional coastal plan).
<b>Submission</b>	Comments, opinions, concerns, support, or opposition about a proposed development, a designation, or a proposed policy statement or plan.
<b>Territorial authority</b>	City or district councils.
<b>Tikanga Māori</b>	Māori customary values and practices.
<b>Water conservation order</b>	A tool for protecting specific waterbodies with outstanding characteristics, by imposing restrictions and prohibitions on the use of the waterbody which regional councils must enforce.
<b>Working day</b>	Any day except for a weekend day, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday and Labour Day, and those days between (and including) 20 December and 10 January. Note: If Waitangi Day or Anzac Day falls on a weekend day, the following Monday is excluded.