

2013

# Plan Development

Submissions on a Plan



## Submissions on a Plan

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The Local Government (Auckland Transitional Provisions) Amendment Act 2013 introduces a streamlined plan-making process that only applies to the development of the first Auckland Unitary Plan (AUP). This guidance note has not been amended to include changes to the AUP plan-making process, rather it focuses on plan-making prescribed by the Resource Management Act 1991. For information about the process for the first AUP, refer to the Ministry for the Environment's [Fact Sheets](#).

Some proposed plans receive thousands of submissions (including further submissions), addressing numerous issues and parts of a proposed plan. The management of submissions is a critical part of the proposed plan preparation process - good practice can facilitate the decision-making process, as well as making it easier for everyone involved.

## Guidance note

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**Making Submissions on a proposed plan or policy statement**

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## Making Submissions

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- When a council has prepared a proposed policy statement, plan, plan change or variation, it must be publicly notified under clause 5 of Schedule 1 of the Resource Management Act 1991 (RMA). Councils must provide the public with at least 40 working days to submit on a proposed policy statement or plan, and at least 20 working days to submit on a proposed change or variation.
- Anyone can make a submission provided that submission does not seek to gain an advantage in trade competition. Where a person is a trade competitor their right to make a submission is limited to where they are directly affected by an effect of a proposed policy statement or plan that;
  - adversely effects the environment; and
  - does not relate to trade competition or the effects of trade competition (see clause 6 of Schedule 1).

Clauses 6-8A of Schedule 1 provide further details on the processes and requirements for making submissions.

## Making Further Submissions

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- Once the initial submission period has closed, the council must summarise and publicly notify the decisions requested by submitters. Following the notification of the summary of submissions, there is an opportunity to make further submissions. The further submission period is no longer than 10 working days from the date the summary of submissions was notified.
- When notifying the summary of decisions requested on submissions, a council only has to serve a copy of the public notice on submitters (and requiring authorities), rather than the summary itself. However, if a submitter requests the summary, a council must provide it within three working days.
- A further submission is limited to a matter in support of, or opposition to, an original submission. Under clause 8 of Schedule 1, further submissions can only be made by:
  - persons who are representing a relevant aspect of the public interest
  - persons who have an interest in the proposed policy statement or plan that is greater than the interest the general public has
  - the council itself.

The same trade competition limits that apply to submissions also apply to further submissions.

See clauses 8-8A of Schedule 1 for further details on the processes and requirements for making further submissions.



## Receiving Submissions

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- The system for receiving, processing and evaluating electronic and paper submissions should be set up well in advance of receiving the first submission. The system should be designed with the end in view – i.e. it should facilitate the decision-making process. Ideally, therefore, there should be a strong relationship between the structure of the proposed plan and that used in processing submissions. A well-numbered and structured proposed plan greatly assists in the referencing process
- The system should also be able to deal with potential problems, such as submissions arriving at different places (service centres, libraries etc). One way of dealing with this is to ensure each service centre or library date stamps or records the date the submission arrived and have them forward submissions received to a central point (such as council records, or the planner overseeing the plan) at the end of each day.
- Implement a good referencing system: number submissions, code submission points, and file them correctly. Note: the submission referencing system will need to be considered from the outset - however, coding of submission points should occur after all submissions have been received, when the structure of the issues' analysis is able to be confirmed.
- It is often helpful to use distinct codes to differentiate between submissions and further submissions to avoid confusion (such as when a submitter had also lodged a further submission that cross references their original submission).
- The submission process can be improved if people are given some guidance in writing them - for example, if there is a logical structure to the submission, and if the relief sought is quite specific and clearly differentiated from discussion points or reasons. The process is hindered by submissions that are difficult to read, express the relief sought in very general or unclear terms (or do not specify any at all), seek relief outside the ambit of the RMA, or the relief sought is not able to be easily identified within a vast rambling text. Submitters could be directed to the RMA Everyday Guide [Making a Submission about a Proposed Plan or Plan Change](#) for assistance in preparing a submission.
- There is varying practice about dealing with late submissions. It is good practice to waive the time limit for submissions received only a day or two out of time. Accepting submissions beyond that period will depend upon whether such waivers would unduly prejudice anyone (see s37) - the principles of participation must be balanced with the principles of natural justice.
- It is good practice to ensure that all submitters have provided full and current contact details, and to follow up as early as possible if there are gaps - standardised submission forms should also give explicit direction to provide full details.
- Submissions may be in written or electronic form. When submissions on proposed plans and policy statements are lodged electronically, they do not require a signature. Ideally systems should be designed so that an electronic submission lodged through a submission form on a council website goes directly into the appropriate database. Receiving submissions electronically can have time-saving benefits for RMA practitioners such as:



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- automatic date stamping and the ability to receive submissions at any time without staff necessarily having to be on duty at that time
- being able to cut and paste when summarising submissions;
- mandatory fields on the submission forms would ensure that all boxes are filled in
- less copying and sending out of paper submission forms
- easier entry of submission points into a database
- never losing submissions in the mail.

### Quality Control

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- Set up a quality control system to check that submissions have been coded, copied, acknowledged and filed. Use at least a simple quality assurance checklist.
- While preferably one person should manage the submission handling process (to provide an overview of quality control and consistency), there should be a strong formalised audit procedure in place so the departure of that person does not jeopardize the entire process.
- In processing submissions, quality is always better than speed.

## Accessible Database

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- Using computer software, local authorities can now index and code submissions. They can also use databases for correspondence, submission analysis and report preparation, and decision-making. Many local authorities have successfully developed and used databases using Microsoft Access© software throughout the entire process (from notification through to Environment Court references). However, a database is only as good as:
  - the analysis, coding and data entry of submissions;
  - the software support; and
  - the people using it.
- The tracking and analysis process should be kept relatively simple (for example, analyse submissions according to all of the rules say on waahi tapu or setback requirements, not according to each individual rule that may apply throughout the Plan). Tracking submissions according to Plan page numbers is also a good technique.
- Using a computer database requires the assistance of a technical support person throughout the process. Technical support staff should understand the present and future requirements for the database; be able to think laterally; and be involved in defining the coding process. For example, the system should be able to deal with changes in addresses for service, names of contacts, or submitters' names (such as company name changes), preferably avoiding the need for multiple data entry. A method for tracking submissions that have been withdrawn or not pursued needs to be considered.
- Database users - planners and administration support - should be familiar with the database, rather than learning by experience. Prepare a manual to support use of the database over time by different people, and to ensure consistency in input and output over time.

## Analysing Submissions

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- How submissions are analysed is generally linked to the scheduling of hearings for submissions (i.e. how and when submissions are heard). Therefore, it is useful to establish the schedule (and the logic behind the schedule) at an early stage as part of determining how submissions are to be analysed.
- There are two approaches to analysing submissions:
  - **By submission:** where each submission is analysed and decided on as a whole, no matter how wide the range of issues and provisions it covers. This approach is more submitter-friendly, allowing submitters to present their case only once before the hearing committee. This approach may be appropriate when there are small numbers of submissions involved.
  - **By issue:** where submissions are broken up and analysed according to the issues/provisions they address. This is the more common approach, and is usually best practice, as it provides a more logical evaluative approach and consistency in analysis and decision-making.
- The by-issue approach can result in the 'disintegration of submissions'. This is where the break-up of submissions for analysis, hearing and decision-making purposes creates a complex and potentially inconsistent process. Methods to overcome the problems that this approach creates for submitters include the following:
  - Group the issues sensibly and logically (this links back to the original coding of submissions).
  - Ensure that submitters have been assigned time to speak to all points raised in their submissions - it can be easy to miss points;
  - Index all reports/decisions, so submitters can readily find all references to their submission.
  - Use pre-hearing techniques to resolve concerns before hearings, and allow submitters to focus on areas of unresolved dispute (for example, submitters may send in statements in response to reports).
  - Work with the submitters, to ensure that they are all assigned a reasonable amount of time to speak to their submission (and record accurately in the database when they were heard).
  - Be flexible and not captured by the process; if appropriate, allow submitters to cover their entire submission at once, especially if they have travelled far and/or do not need much time. (Note that some submitters may be happy to come back and speak several times, as they may think multiple appearances would be better received.) However, it is important that the hearing process is managed well; this may include issuing clear directions about appearances and time limits.
- When preparing reports on submissions, balance specificity with practicality. Council's decisions do not have to address each submission individually (clause 10 of Schedule 1). Analyse submissions according to themes or issues, so overlaps and interrelationships are managed as a whole. Cover generic issues at one time, and refer back to the generic analysis as required when analysing individual submissions.



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When reporting on specific submissions, include enough analysis to make the reasoning logical and transparent, even on relatively minor or seemingly trivial points. However, avoid 'overloading' reports and thereby submitters and decision-makers as well.

- KISS: 'keep it simple stupid' is a critical principle in analysing submissions. Don't break down the analysis process too much but keep it at the highest level possible. For example, it is preferable that submissions on the rules on heritage should be analysed together, and not according to each specific rule on heritage.
- Use peer review for quality control in analysing submissions, to ensure consistency and thoroughness in evaluation.
- Submission evaluation and report preparation is a real skill. Experience is valuable, as are training courses in report writing. Someone skilled in good report writing should manage the process. For example, such a person could set up templates for reports and have a role in quality control.
- Some local authorities send out draft reports, particularly to major submitters and/or on complex submissions/issues. These may help resolve technical matters, raise consequential matters that were not thought of, or obtain buy-in for methods for resolving concerns. Pre-hearing meetings can also assist in this process, as can direct enquiries with submitters or their advisors. However, care must be taken that such approaches are not used as opportunities for submitters or council staff to change the original submissions.

### **Resolution of Disputes**

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- Clause 8AA of Schedule 1 sets out the pre-hearing process that can be used by a local authority to clarify or resolve disputes or matters that arise out of submissions on a proposed policy statement or plan. This may be undertaken on request from a submitter or be initiated by the council. Councils can also, with the consent of the parties, refer issues (that were raised by submitters) to mediation. Attendance is not compulsory, although if a pre-hearing meeting is held, a report must be prepared before the hearing. The mediations must be conducted by an independent mediator.





## Reporting to Decision - Makers

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- It is good practice to have submissions analysed by resource management professionals, with the results prepared as reports with recommendations for decision-makers. Very few local authorities have left it to decision-makers to hear and consider all submissions in the absence of reports. This approach may work where the decision-makers have been fully immersed in the issues and the proposed policies. However, there are good reasons to have submissions evaluated before hearings:
  - evaluative reports can form a crucial role in meeting ss32 and 32AA requirements
  - such reports can sort out many minor issues before a hearing, and help submitters to know which issues to focus on
  - reports can address any technical matters that might be raised by submitters before a hearing (for example, traffic or noise management) reports assist decision-makers in evaluating issues
  - reports can form the basis for preparing decisions
  - reports provide a background for matters that go to the Environment Court, especially if there are staff changes.
- Any s42A report must be provided to submitters wishing to be heard at least five working days before the hearing. The council must also notify submitters who did not wish to be heard, of the report, and where it can be viewed. However, getting reports out earlier is good practice, although time and resource constraints may make it difficult to do so. For cost-efficiency, most local authorities have reports issued at the time the notices of hearing are sent out to submitters. Even getting reports out two weeks before a hearing will help ensure sufficient time to sort out the hearing schedule, after submitters determine if they still wish to be heard.

## Hearing Submitters

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- All aspects of the hearing process need to be planned carefully, and well in advance: scheduling, venues, timeframes, responsibilities, recording, reporting, and resourcing.
- The appropriate use of independent commissioners should be identified at an early stage - for example in matters of perceived conflicts of interest, such as council designations. However, the delegation of decision-making powers in relation to plans is subject to the restrictions under s34.
- Sections 41A-41C clarify the powers for decision-makers when conducting hearings. These powers can be exercised if the scale and significance of the hearing makes the exercise of the power appropriate. These powers include directing submitters and applicants to provide their evidence within time limits.
- Section 41C provides the decision-making authority with powers to give directions and make requests before or at hearings. Directions can be given regarding the order of business and how evidence is presented. The authority can also direct the applicant or a submitter to present evidence within certain timeframes and submissions can be struck out. Further information can be provided via a commissioned report.
- The hearing forum can be unfriendly and intimidating for submitters, many of whom may be unfamiliar with the process. Make it as least intimidating as possible, for instance by:
  - providing a level 'roundtable' environment;
  - providing refreshments;
  - having someone meet and greet submitters, a friendly face who can answer questions and provide direction on the process; and
  - sending submitters leaflets prior to the hearing, outlining the process. The MFE Everyday Guide [Appearing at a Council Plan or Plan Change Hearing](#) would be appropriate.
- Everyone with responsibilities in hearings should have a clear understanding of their role - councillors, commissioners, planners, other reporting officers, and committee clerks. The chairpersons should outline the procedures and process before each hearing: for example, role of reporting officers versus decision-makers.
- As with all hearings, decision-makers must be, and must be seen to be, impartial. For example, to avoid perceptions of, or opportunities for, informal persuasion or influence, decision-makers usually need to be kept separate from submitters during hearings (for example, during morning tea). Separation between hearing panels and reporting officers is also preferable. The level of separation, however, will need to be judged on a case-by-case basis.



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- Organising hearings is a time consuming process. For large numbers of submissions, it is preferable to organise hearings in stages. Confirm the schedule close to the date, so submitters can finalise their attendance and indicate how much time they require. Phone submitters just prior to the hearing, either to ensure attendance or to reschedule as required. Also identify available resources to help them present their submission. Have someone available to contact submitters during hearings, if need be. Tip: Have submitters' contact numbers at the hearing to facilitate follow-up if there are delays in the hearing.
- For the hearing programme, group submitters with short time requirements in 'blocks' rather than individually, so if a submitter does not turn up, the committee can hear the next one immediately and not have to wait for the time that was allocated for that submitter.
- Keeping records of hearings is an important part of ss32 & 32AA obligations. Section 41C(b)(i) allows the authorities to direct that evidence and submissions be recorded. Some local authorities tape all hearings, but only transcribe tapes if needed. Good practice is to ensure that a record is kept of the written submissions and that a written record of any associated verbal dialogue is prepared - for example, interpolation of submissions and responses to questions.

### Tips

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- All submissions should be coded and copied/scanned, with the originals archived somewhere safe. Only mark up copies.
- Mark up submissions as to how each point has been coded - i.e. part of submission, coded according to reference number (for example, 70/23 - submission number 70, point 23 (only identify points that need a separate decision)). Have these available for submitters to see if necessary.
- Planners need to work closely with committee organisers throughout the process, and should be closely involved with setting up the system of hearing and making decisions. The committee organiser needs the right qualities for the position, including the patience of a saint, and the mind of an accountant.
- Ensure that council staff do not assist people in preparing submissions (which can later create difficulties for the council). Their assistance should be confined to providing verbal advice about the provisions of the proposed plan/proposed plan change. Refer people to resource management professionals if they are unable to write their own submission. The EPA often appoints a friend of the submitter to their projects, they are available to provide potential submitters with guidance on process. The Friend of Submitter will not provide advice on the merits of the proposal, but is there to help potential submitters understand the process.
- Encourage submitters to advise changes of address or other contact details.
- Send courtesy letters on receipt of submissions, and also advising on progress and timeframes.



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