

A QUICK GUIDE TO PUBLIC CONSULTATION

This is a quick reference guide to the use of public consultation during policy development. It is intended as a starting point for establishing whether public consultation is needed and what it should entail, and sets out the key elements of effective public consultation.

Should you consult with the public?

Public consultation is an important aspect of open and participatory government. However, as it can take time and can be expensive, you need to weigh up carefully whether it is necessary.

The following questions need to be considered when deciding whether public consultation is required:

- Is there a statutory obligation to consult on this policy proposal?
- Do stakeholders have a reasonable expectation that consultation will occur, taking into account past practice and any promises made?
- Do some people have a particular interest in the outcome of the policy decision (i.e. might their rights be affected)?
- Would the policy process be enhanced by further review and input?

What is good public consultation?

Public consultation is not a strait-jacket. You are not obliged to agree with the views tendered in the course of consultation, and you may have a preferred course of action. But while consultation is occurring you must keep an open mind, be willing to change and, if necessary, start the decision-making process again. Good public consultation has these characteristics:

- The method and level of consultation are appropriate to the policy proposal and audience.
- The views of the public are genuinely sought.
- Parties are provided with sufficient information to make informed submissions.
- There is adequate time for parties to make their submissions.
- Feedback is carefully recorded and summarised objectively.
- Submissions are considered with an open mind before the final decision is made.

Types of public consultation

There are several different ways to consult with the public. The method(s) you choose will depend on the nature of your policy proposal and the amount of time available for consultation. Possible methods include:

- *Public discussion document* – for large scale policy proposals and significant public legislation (note that Cabinet approval is required prior to publication).
- *Targeted discussion document* – for policy proposals with restricted impact or which involve minor technical changes.
- *Open public forum* – for proposals that affect localities or raise strongly held opinions.
- *Hui or fono* – for policy proposals that have significance for Māori or Pacific peoples.
- *Stakeholder meeting* – for proposals that affect industry or community groups.

Timing public consultation

Consultation should occur after the basic policy work has been completed, but before final decisions have been made. Consultation too early will be unfocussed and unhelpful. Consultation too late may be subject to legal challenge.

As consultation can be a time-consuming process, you should start planning your consultation early in the project. Your timeline needs to allow for some or all of the following (depending on the scale of the consultation exercise):

- Preparation of a discussion document (3 to 12 weeks).
- Ministerial and/or Cabinet approval for public release of a discussion document (3 to 5 weeks).
- Publication and distribution (2 weeks).
- Adequate time for stakeholders to prepare submissions (6 to 8 weeks).
- Preparation and consideration of the summary of submissions (4 to 8 weeks).
- Further consultation and clarification of issues, if required.

Note: These timeframes are a guide only.

Risks of not undertaking proper consultation

Failure to undertake proper consultation can result in the following:

- Breach of any duty to consult, and consequent potential for judicial review.
- Criticism from stakeholders of, among other things, failure to give people sufficient opportunity to comment, bias or predetermination of views.
- Bad publicity or ill-informed comment on the proposals.
- Future suspicion and/or lack of buy-in on other consultation exercises.
- Less than optimal regulatory outcomes.
- Not getting the information you need to inform thorough analysis of the options, including information required for Cabinet processes (e.g. regulatory impact analysis) and information from all necessary groups of stakeholders.

Lack of good process can also lead to time delays while challenges are undertaken, official information requests filed, media queries and political commentary responded to, etc. It is in the interest of all parties that consultation processes be well planned and executed.

How to run a hui or fono

Some communities prefer to be consulted in person rather than by paper, and some communities will engage better with your proposal if it is presented in a suitable cultural forum such as a hui or fono.

There are many forms of hui, from formal meetings on a Marae to small group discussions. For advice on consulting with Māori, contact Te Puni Kōkiri and/or your local iwi directly.

Information about consultation with Pacific communities can be found on the Ministry of Pacific Island Affairs website, http://www.minpac.govt.nz/resources_tools_pacificconsultationguidelines.htm

Developing a discussion document

- Allow plenty of time for developing the document including discussing content with others in your organisation, your Minister and (as appropriate) any external stakeholders.
- Clearly identify your target audience and ensure that your document is written appropriately (more or less technical language and background information depending on the expertise of your audience).
- Be clear about the level of confidentiality that can be assured (submissions are likely to be subject to the Official Information Act).
- Have a clear statement about the purpose and possible outcomes of consultation.
- Keep background information to a minimum – focus clearly on the issues.
- If your project is going to need a Regulatory Impact Statement (RIS), include a draft RIS or discussion about the RIS sections (see the Ministry of Economic Development's Guidelines on *Regulatory Impact Analysis* at http://www.med.govt.nz/templates/ContentTopicSummary_606.aspx).
- Use questions to guide feedback to help simplify later analysis, but leave room for stakeholders to disagree with your fundamental assumptions.
- Provide a feedback form to make it easy for submitters to respond.
- Consider using electronic media to circulate the discussion document or receive feedback.
- Make sure your document looks good and reads well.
- If your project is likely to have a significant impact on economic growth, submit a draft of the discussion document to the Regulatory Impact Analysis Unit at the Ministry of Economic Development.
- Get all necessary approvals before publication, including Ministerial and Cabinet approval where appropriate.

Thinking about public consultation

Questions to consider while you plan your consultation:

- Is it needed?
- How will it affect decisions?
- Who is the audience?
- What are the timeframes?
- Which methods of consultation are appropriate?
- What approvals are required?
- How will responses be managed?
- How will feedback be used?

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