

APPENDIX 8B:**GUIDELINES - EVIDENCE AND SUBMISSIONS BEFORE THE RESOURCE MANAGEMENT AND PLANNING APPEAL TRIBUNAL****Witnesses Statements of Evidence and Advocates Submissions - Basic Distinctions**

Evidence	Submissions
A statement given by a witness	Argument or persuasion - by an advocate
Of fact or opinion so as to prove that fact or opinion e.g. facts - details of a development e.g. opinion - access for traffic will be unsafe	Argument as to which facts or opinions should be accepted by the Tribunal and as to the effects of those facts and opinions and the law upon the issues before the Tribunal. Submissions refer to the evidence given or assessed. Submissions do not contain new facts and are not capable of proving anything.
Normally evidence is given first	Normally submissions are made after the evidence has been concluded
Normally not given as to construction of an Act, State Policy, Planning Ordinance or other legal instrument	Characteristically as to proper construction (meaning) of an Act, State Policy, Ordinance or other legal instrument, as well as about the effects of facts or opinion
May be non-expert or expert	
Expert - as to fact or opinion requiring special skill or knowledge Facts outside the expertise of the Tribunal e.g. accepted scientific fact behaviour of sound - behaviour of fume and odour plumes - accepted chemical reactions - accepted physical facts Opinion - e.g. inferences or conclusions drawn from facts proved by the expert or by other witnesses in the proceedings e.g. probable overshadowing resulting from a structure - likely behaviour of an odour plume - effect of a development upon heritage significance of a building - likely extent of overshadowing caused by a structure	
While expert opinions must be formed upon stated or proven facts, there are some facts that do not require proof, e.g. dictionaries, generally accepted scientific texts and writings and journals, generally accepted bodies of expert knowledge	
The Tribunal or a court is not obliged to accept expert evidence, even though it remains un-contradicted.	
Experts should not express an opinion upon the	Submissions may be made as to what conclusions

<p>ultimate question the Tribunal is to decide.</p> <p>e.g. In an appeal against the refusal of a permit, an opinion that the permit should be granted. An opinion that there is no apparent planning reason why a permit could not be granted would be acceptable.</p>	<p>the Tribunal should reach and the proper form of any order.</p>
<p>The limits of evidence - evidence is not receivable if it is not relevant to issues in the proceedings before the Tribunal.</p> <p>For example, in an appeal against the grant of a permit, residential amenity may be relevant, but the way in which Council reached its decision is not. Matters such as bias of Councillors, or a failure to follow the Council Planning Officer's advice, are not relevant. It is the decision (i.e. permit or the conditions imposed upon it, the refusal to grant a permit,) which are relevant and not the manner in which Council reached that decision.</p> <p>The only exception to the above is in the case of issues of jurisdiction, for example, where a requirement of LUPAA has not been complied with.</p>	
<p>Expert witnesses; expert witnesses as advocates; and the form of expert evidence:</p> <p>Please read the contents of PD15 and PD8.4 of these Practice Directions closely.</p>	
<p>'Issues'</p> <p>The issues in the proceeding are those which have been established by the grounds of appeal as elaborated by the lists of issues presented by the parties to the Tribunal at the first directions hearing, or as otherwise directed by the Tribunal.</p>	