



Striking a Balance

A Practice Guide on Consultation and Communication for Project Advocates

Acknowledgements

Noreen Barton and Angela Shaw of Opus International Consultants Limited prepared an initial draft of this document, which has incorporated and built on a research document *Facilitating Effective Consultation under the Resource Management Act 1991*. Opus completed this research document for the Ministries for the Environment and of Health, the Departments of Social Welfare, Corrections and Courts, Transit New Zealand and Specialist Education Services. These agencies provided comment on the guidelines during the drafting process.

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Introduction

This is a practice guide for project advocates involved in development proposals and who must make decisions on consultation requirements under the Resource Management Act 1991 (RMA). It is designed to complement practical training and experience in consultation techniques.

In most cases, the potential results of changes can be measured objectively and described in terms of identifiable effects – for example, changes in vegetation, traffic flow, water clarity, population density, or pollution levels. They can be clearly described, and their likelihood can be predicted with a demonstrable degree of accuracy.

But there are also situations in which people are unconvinced by so-called rational criteria. Projects such as those described in the Section 6 case studies – residential treatment facility, road upgrade, supported housing project, meatworks, group home – can create major anxiety in all or part of a community due to perceived adverse effects. People who in principle support a project will oppose the project when faced with the actual prospect of having the project completed in their community. Although technical and planning evidence may suggest that the adverse environmental effects are minimal, the predominant community response to some of these projects can be classified as NIMBY (Not In My Back Yard).

The particular mix of perceived effects expressed by a community depends on the nature of the proposed project. The perceived effects most often associated with the NIMBY response are:

- adverse health effects
- personal safety and security issues
- adverse effects on property values
- adverse effects on neighbourhood amenity (for example, traffic effects).

This guide is directed towards techniques for addressing these concerns and meeting the requirements of the RMA. It provides best practice guidance (not hard and fast rules) for project advocates on developing strategies for consultation and communication. Consultation includes an exchange of information and views. Consequently, effective consultation is inextricably linked with an effective communication process. The case studies illustrate experience in developing these strategic considerations in an appropriate and cost-effective consultation programme which may be part of a wider process of communication with the community concerned.

The guide is aimed at forging a common understanding amongst project advocates, practitioners, councils, tangata whenua and communities of what constitutes a fair and reasonable consultation programme.

It includes a review of relevant case law, discussion of the risks associated with consulting and with not consulting, identification of the principles of best practice for consultation and communication, and analysis of selected projects.



Section 2: Is Consultation Necessary?

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Consultation is not required under the RMA when a proposed project is a permitted activity in the relevant plan, although communication with the community may be desirable.

The question of whether to consult or not on projects requiring a resource consent or for designations is best answered by carefully balancing the associated risks.

With due consideration to the requirements of the RMA, project advocates must decide whether they will undertake a formal consultation process.

There is no consensus amongst project advocates regarding the desirability of high-profile public education campaigns and consultation processes over low-profile approaches; strong community opposition can result from either. The risks of embarking on a consultation process include:

- time implications
- cost implications
- resource implications
- raising community expectations.

There may be risks for the advocate if consultation is not undertaken prior to formal approval through an RMA process. Those risks can include:

- unwillingness by the advocate to site projects in the preferred location because of anticipated community opposition
- failure to obtain resource consent
- for group homes, the assertion of human rights arguments may cause advocates to overlook valid community concerns and actual or potential environmental effects. In the context of group homes, one argument for not consulting is that international and domestic law supports the right of the group home occupants to live in the community and that community opposition erodes that right
- imposition of conditions on resource consent or the designation by the consent authority which are designed to allay community concerns but which adversely affect the operation of the project

- community resistance and opposition during the establishment phase
- the fact that a low-profile entry approach may not enhance opportunities for the users of facilities to interact with neighbours in positive ways
- the possibility that improvements to the design of the proposed project may not be identified.

Best practice

- Although consultation is not mandatory for resource consents or notices of requirement, best practice is to undertake consultation on projects which require formal approval through an RMA process.



Section 3: Consultation Under The RMA: The Legal Aspects

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The RMA does not include a specific definition of consultation.

3.1 What is consultation?

The concept of consultation and the obligations of certain parties have been interpreted in case law. The discussion of the concept of consultation in *Wellington International Airport Ltd v Air NZ* [1991] 1 NZLR 671 has provided a reference point for resource management cases.

The Court of Appeal said that the elements of consultation include:

- the statement of a proposal not yet finally decided upon
- listening to what others have to say and considering the responses
- allowing sufficient time for consultation
- making a genuine effort to consult
- conducting the process in mutual good faith
- providing enough information to enable the party being consulted to make intelligent and useful responses
- keeping an open mind and being ready to change the proposal or even start afresh, although it is allowable to have a working plan
- holding meetings, providing relevant and further information on request
- waiting until those being consulted have had a say before making a decision
- re-opening the consultation process if necessary.

The purpose of consultation

Despite the guidance provided by the Court of Appeal there is some disparity of views about what the purpose of consultation is. The following table indicates the purpose of consultation as ranked by the advocates, council planners and community representatives involved in five of the case studies in Section 6 which gave rise to special community concerns over and above the easily quantifiable effects:

There is some agreement amongst advocates, council planners and community representatives that the primary purpose of consultation is to ascertain community views and opinions in order to achieve a better project. These purposes are in general accordance with the Court of Appeal's principles.

Reason Given	Project advocate	Council planner	Community representative
Ascertain community views and opinions	1st	1st	1st equal
Achieve a better project	2nd equal	2nd equal	1st equal
Inform the community	2nd equal		2nd equal
Meet RMA requirements	2nd equal		
Obtain community acceptance		2nd equal	
Achieve consensus on the project			2nd equal

As indicated by the Court of Appeal, consultation is more than just informing the community or meeting the requirements of the RMA. Consultation does not mean consensus or acceptance, nor does it equate to negotiation, although it may result in an agreement to negotiate.

The differences on the primary purpose of consultation between advocates, council planners and community representatives can be attributed to the perspective of each party and their respective obligations under the RMA.

Given the general misunderstandings surrounding the purpose of consultation under the RMA, the Court of Appeal’s principles should always be explained to the community and the purpose of the consultation programme confirmed.

3.2 Consultation for designations

Section 168 of the RMA specifies that a notice of requirement must include a statement of the consultation, “if any”, that the requiring authority has had with persons likely to be affected by the designation.

The question is, should consultation be undertaken?

The parameters of the consultation process undertaken will depend on the nature and scale of a project or work. However, a notice of requirement for a designation should be comprehensive as to the information supplied.

The RMA (section 168(3)) specifies that a notice of requirement should include, amongst other things, the following information:

- a description of the site
- a description of the project or works
- actual and potential effects on the environment
- ways in which any anticipated effects may be mitigated.

It is likely to be difficult to meet these statutory obligations without engaging in consultation with the parties likely to be affected. **It is therefore prudent that consultation be undertaken as part of the designation process.** This view is supported by the decision of the Environment Court in *Malfroy Area Residents Action Group v Rotorua District Council* A 92/98.

Consultation is not required before a notice of requirement is publicly notified (as confirmed in the *Malfroy* decision).

Where a requiring authority seeks to rollover an existing designation, consultation is not required, but may be undertaken as appropriate. If the use of the designated site has changed, or modifications to the designation are proposed, it would be prudent for the requiring authority to consider the need for consultation to positively manage the community response and address valid concerns where possible.

3.3 Consultation for resource consents

Consultation would appear to be mandatory as specified in the Fourth Schedule to the RMA (the assessment of effects required to accompany applications for resource consents). Clause (h) of the Fourth Schedule states that the assessment is to include:

an identification of those persons interested in or affected by the proposal, the consultation undertaken, and any response to the views of those consulted.

In addition, section 92 of the RMA allows a consent authority to seek further information, including an explanation of the consultation undertaken by the applicant.

Consultation is desirable in most cases but it is not a statutory requirement. In *Quarantine Waste Ltd v Waste Resources Ltd* [1994] NZRMA 529 (HC) the High Court concluded that the applicant's failure to consult did not amount to a failure on the part of the Council to take into account a relevant factor. There may be instances where consultation is not necessary, particularly when there are only minor adverse effects anticipated or sufficient separation distances exist between the proposed activity and any adjoining landowners or occupiers.

It is therefore prudent that an applicant undertake consultation prior to the lodging of any resource consent application.

Consultation is not required under the RMA when a proposed project is a permitted activity in the relevant plan, although communication with the community may be desirable.

3.4 Consultation with tangata whenua

Section 8 requires that all persons exercising functions and powers under the RMA take into account the principles of the Treaty of Waitangi.

A duty to consult is one of these key principles.

Consultation with tangata whenua is not dealt with specifically in this guide. It is considered that while tangata whenua may be represented amongst the general community to be consulted, they have unique and sometimes separate concerns. These concerns relate in part to specific provisions of the Resource Management Act 1991 (RMA) and as such are beyond the scope of this guide. Consultation with tangata whenua is dealt with in more detail in the Ministry for the Environment's publication *Case Law on Tangata Whenua Consultation* (June 1999).

The onus to undertake consultation with tangata whenua on resource management matters, particularly where there are matters of significance to tangata whenua is on consent authorities and not the applicant or requiring authority. It is the applicant or requiring authority's responsibility to undertake consultation with affected parties, which may include iwi, although this is not mandatory.

Case law indicates that irrespective of whether consultation is done by the applicant or requiring authority, council officers have a duty to ensure that their advice to council addresses all the relevant issues, including independent consultation where appropriate (see *Gill v Rotorua District Council* [1993] 2 NZRMA 604, *Haddon v Auckland Regional Authority* [1994] NZRMA 49 and *Quarantine Waste Ltd v Waste Resources Ltd* [1994] NZRMA 529 (HC)).

3.5 Concerns about unknown risk

A matter frequently raised in opposition to resource consent applications and notices of requirement is the perceived possible adverse effect of the proposal on health and safety. Arguments based on this line of reasoning present evidential difficulties because they deal with future possibilities where the outcomes are uncertain.

Fear can arise from a variety of situations and sometimes contain a "but what if..." aspect to a known danger – for example bullets straying from a rifle range. Alternatively, fear can arise from a perception of danger from activities or events that are either poorly understood, or not understood at all.

Opponents usually suggest that if there is an element of risk then the application should be refused. This is known as "prudent avoidance". However, under such a test no development would ever be approved, simply because the absolute standard cannot be achieved.

The main cases in which fear is a factor relate to concerns over discharge of a contaminant or escape of something dangerous: see *Meadow Mushrooms Ltd v Paparua County Council* (1977) 6 NZTPA 327; *Duncan v Thames Coromandel Council* (1980) 7 NZTPA 233; *Liquigas v Manukau City Council* (1983) 9 NZTPA 193; *Shell Oil New Zealand v Auckland City Council* [1993] NZRMA 363; *Trans Power v Rodney District Council* A85/94; *Ammon v New Plymouth District Council* W27/97; *Department of Corrections v Dunedin City Council* C131/97; *Kapiti Coast District Council v Raika* [1997] NZRMA 218.

These cases indicated that fear will be a relevant consideration when the fear is well-founded, based on what a reasonably well-informed member of the community might think, and if there is some opportunity to prevent apparent danger, for example the escape of something considered to be a possible threat. When something is new or when the probability of its escape is high then the fear will be greater, but it should be noted that the case law is not sympathetic to the fear of new technology.

Given the reluctance of the Environment Court to give significant weight to evidence relating to such fears, the argument has limited value.

Case Notes: Cellphone sites and perceived health and safety effects

In case law to date, the Court has ruled that there are no established adverse health effects arising from the emission of radio waves from cellular facilities (including *McIntyre v Christchurch City Council* [1996] NZRMA 289). The validity of arguments based on perceived effects has been considered recently in *Shirley Primary School v Telecom Mobile Communications Ltd* [1999] NZRMA 66 (EC).

The case was about possible adverse community health and safety effects from the emissions from cell phone towers. The Environment Court was reluctant to exclude such evidence because where psychological fear is an issue, emotion and perceptions ought to be taken into account. However, the Court determined that psychological fear could not form the sole basis for any decision.

The *Shirley* decision provides guidance on many of the contentious issues associated with the debate on the siting of radio frequency fields. The Court found that there are potential adverse health effects of low probability, but only in a very weak sense, and that this was not a reason for declining resource consent).

Whether psychological fear is an effect to which any weight should be given depends on whether the fear is reasonably based on a real risk. The perceived risk should be evaluated along with all the other evidence on the merits and circumstances of each proposal.

3.6 Concerns about property values

The possibility of a decline in property values is a fear held by many property owners in the vicinity of sites about to be developed in ways which deviate from the established pattern. In terms of residential development, the fear of a decline in property values is generally based on the assumption of a reduction in amenity values or a loss of special features. The RMA defines amenity values as:

Those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes.

This definition suggests that amenity values as defined in the RMA are those values held by the community rather than the individual. It would therefore be difficult under the RMA to relate a reduction in the value of an individual property to the loss of overall amenity, as perceived by the community.

A further difficulty in accepting the assertion of lower property values lies in the speculative nature of future value.

The Environment Court has not developed a consistent line on whether or not diminishing property values can be taken into account as an adverse effect on the environment. Those judgements which say diminishing property values should be taken into account include *Goldfinch v Auckland City Council* 1996 NZRMA 97, *MacTavish v Dunedin City Council* CP53/96, *Prestige Print (1965) Ltd v Wellington City Council* W94/95, *Bunnick v Waikato District Council* A42/96. Those who reject the proposition (whether directly or indirectly) include *Faulkner v Gisborne District Council* [1995] 3 NZLR 362, *Imrie Family Trust v Whangarei District Council* [1994] NZRMA 453, *Queenstown Property Holdings Limited v Queenstown District Council* [1998] NZRMA.

Where diminished property values have been taken into account, the issue has largely been noted in passing rather than being the central issue. However, *Queenstown Property Holdings* involved conclusions directly relating to diminished property values. The Court considered that protection of property values has no obvious connection with the sustainable management of natural and physical resources.

While *Queenstown Property Holdings* concerned a retail rather than a residential situation, the Environment Court has been reluctant to accept such evidence on diminished property values and as a result the argument has limited scope for use in legal argument.

Diminution in property value is not a matter to be taken into account in resource management decision making.

3.7 Cultural and social concerns

Community objections to projects can be connected to questions of cultural and social appropriateness. There are activities and events which are culturally and/ or socially repulsive to the extent that they should not be permitted. Racism as evidenced by the use of the swastika is a case in point (*Zdrahal v Wellington City Council* [1995] NZRMA 289). To be effective in achieving the specified outcome, the view of the submitter must be held by a significant section of the community.

The legal test is objective and the material must be held to impinge on the values of society as a whole.



Section 4: Consultation

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There are a number of strategic considerations that must be addressed in developing and implementing an appropriate and cost-effective consultation programme.

The best practice principles discussed below relate primarily to those projects requiring approval under the RMA. While reference is made specifically to projects where a NIMBY response is anticipated the principles are applicable to the design of consultation strategies in general. The basic difference is that where a NIMBY response is anticipated, each of the issues will generate an intense response which must be dealt with. In the design of consultation strategies for other projects the community response may not be so intense across these issues.

The key to best practice is that the essential elements of the consultation process are considered and agreed at the outset and are then reviewed and adjusted as necessary during implementation. The elements to consider are described in the following sections.

4.1 Explain the rationale

The level of community understanding of the underlying rationale for a proposed development, be it at the national, regional and/or district level, is an important consideration in developing an appropriate consultation process. Communities should be provided with the information necessary to understand the rationale for projects proposed for their neighbourhoods. Communities may want to debate the merits of the rationale and it may or may not be accepted, but at the very least the rationale should be explained.

Best practice

- Hold initial discussions with community leaders, key agencies and local government politicians to gauge the level of understanding and support for the proposed project
- Clearly state the issues that are being consulted on and those that are not
- Disseminate information and educational material to the community on the rationale for the proposed project
- Include community leaders, key agencies and local government politicians in the site selection process and/ or scoping of the community of interest as appropriate.

4.2 Scope the community of interest

It is vital to adequately scope the community of interest, as inadequate scoping may provide grounds for a legal challenge. The factors to be taken into account include:

- the geographical extent and topographical boundaries to the community of interest
- visibility of the site from different locations
- the geographic spread of effects (for example, typical absconding routes or school catchment areas)
- the nature of the anticipated interests and concerns.

Where there are perceived health, safety or security concerns, a wider section of the community is likely to want to express an opinion.

It is vital to identify when it is necessary to consult with tangata whenua.

If an advocate does not properly consult with tangata whenua and report on the process and results, the processing of the RMA approval may be delayed.

It is useful to talk to the council about whether proposed projects are likely to be of interest to tangata whenua.

Best practice

- Discuss and agree the scope of the community of interest with the council planner
- Consider involving local community leaders (for example, residents' association chairs, local MPs, councillors and/or iwi) in scoping the community of interest
- Seek advice from the council on the process for consulting with tangata whenua (where necessary).

4.3 Identify the objectives for consultation

There can be considerable variation in interpretation amongst advocates and communities as to the purpose of consultation. Communities may expect that the purpose of consultation is to achieve consensus. In actual fact, the advocate's operational requirements may overshadow the importance of responding to community views and concerns. The Court of Appeal's discussion of the concept of consultation in *Wellington International Airport* provides the definitive reference for resource management cases.

Best practice

- Review the Court of Appeal's principles of consultation prior to commencing any consultation process
- Agree the objectives of the consultation process with the key players
- Communicate the objectives of the consultation process to the community (as part of the more general written information and/or during public meetings, hui, small group discussions or individual meetings).

Examples of appropriate objectives

Suitable objectives for a consultation strategy might be:

- brief directly affected parties on the nature, scale and possible location of the project
- distribute information on the proposed project
- discuss possible effects of the proposal and options to avoid, remedy, or mitigate effects with affected parties and obtain feedback
- provide a forum for the wider community to air its views and to ask questions
- explain clearly to the community the timeframe and process for consultation
- identify possible methods of avoiding, remedying or mitigating adverse effects and provide feedback.

4.4 Identify roles of key players

It should be clear to the community who is responsible for different aspects of a project and consequently where additional information can be obtained. Confusion about these matters can cause frustration, leading to a breakdown in communication. Blurred responsibilities can create suspicion that the advocate might not be responsive to community concerns during the construction or operation phase.

Best practice

- Agree and clearly define roles and responsibilities for the consultation process and communicate these to the community
- Involve someone concerned with the management and operation of the facility (where relevant) in the consultation to assist in building trust
- Make it clear where information can be obtained about the proposal and the process.

4.5 Establish a timeframe

While there is generally urgency to have developments operational as soon as possible, it is important to carry out an effective consultation process. There are three drivers which establish the timeframe for any consultation process:

- the appropriate methods of consultation for the proposal and the community
- the imperatives of the advocate, including the political agenda
- resource and budget constraints.

These factors must be balanced against each other in such a way that the consultation process can be implemented in a logical and responsible manner. Allowing sufficient time for those being consulted to respond is an important element of consultation as established by the Court of Appeal.

Project advocates will often have committed considerable time, effort and money to a proposal well before the community are informed or consulted. Once an advocate has lodged an application for resource consent or a notice of requirement there are often limited aspects on which compromise with the community is possible. There may be potential for finding solutions to identified conflicts if some consultation has taken place prior to a resource consent application or notice of requirement being lodged and the formal RMA process beginning.

Best practice

- Establish a timeframe for the consultation process and agree it with the key parties involved in implementation
- Communicate the timeframe for the consultation to the community at the outset
- Agree any modification to the timeframe between the advocate and the consultation team and then communicate the modifications to the community.

4.6 Remember the historical context

It is useful for advocates to gain an awareness of the other issues faced by a community as these may impact on reaction to the current proposal. For example, opposition can sometimes occur if a community feels that it is hosting more than its fair share of anxiety-provoking projects compared to other neighbourhoods. The advocate's awareness of existing facilities and proposals can assist in identifying communities that might be experiencing overload.

Sometimes a community may have been consulted during an earlier phase of the planning process or for a different site. The focus of each phase of the consultation process should be made clear to the community.

Best practice

- Avoid inundating any one community with sensitive projects as far as practicable, unless it is generally felt preferable to locate “like” facilities together
- Acknowledge the outcome of previous proposals and consultation
- Clearly distinguish the aim of the current consultation process from any previous process.

4.7 Consult on alternatives

The issue of how many alternative sites, or the alternative uses of an existing site, to consult on is a key decision. One benefit of consulting on a number of alternative sites is the ability to demonstrate under the RMA that consideration has been given to alternative sites, routes or methods (as appropriate). The drawbacks of consulting on alternative sites include cost, time and the risk that the consultation will be interpreted as playing communities off against each other. A risk of consulting on only one site is that the community will interpret the proposal as a done deal.

There is no hard and fast rule for consultation on alternatives as every situation is different. Whether consultation takes place on one site (or use) or on multiple sites (or uses) it is unlikely that all the interested parties will agree that the right approach is being taken.

Best practice

- Agree any decision regarding consultation on alternatives with the key parties involved in implementing the consultation process
- Ensure that alternatives are acceptable to the requiring authority or project advocate as real alternatives
- Draft guidelines for site selection that are not so general as to become meaningless or so absolute so as to predetermine the outcome.

4.8 Choose appropriate consultation methods

The choice of consultation methods should be a considered decision based on the nature of the project, the scale of community interest and the project timeframe. Possible consultation methods include:

- public meetings
- open houses/ information days
- small group meetings
- individual meetings
- invitation for written comments
- letters
- telephone hot lines.

While public meetings may be a traditional method of undertaking consultation, they should not be the only method of consultation used. These may pose potential difficulties in presenting information and obtaining constructive feedback.

An open house or information day can involve project staff and graphic resources available at a specified location for a set period of time to discuss the project on an individual or small group basis. Open houses or information days are often a good alternative to public meetings, or they can be used in addition to public meetings. Such forums provide for information exchange while avoiding capture of the event. Where an existing facility is the subject of an application under the RMA an open house can provide the local community with an opportunity to see the operation for itself.

Liaison with the council prior to making any decisions on the choice of consultation method(s) might be useful, as the council itself may have adopted a policy on community consultation that the advocate should be aware of.

Best practice

- Hold a public meeting, open house or information day as the first step in consultation where the project is large scale, an institution or is proposed for a highly sensitised neighbourhood (if the proposal is for a smaller, less sensitive project small group or individual meetings may be more appropriate)
- Schedule any public meeting, open house or information day at a time that is suitable for those being consulted
- Advertise the public meeting, open house or information day with letters, brochures etc.

- Supplement the initial public meeting, open house or information day with other forms of consultation as appropriate (including individual or small group meetings and/ or invitations for written comments)
- Be ready to respond to community demands for a public meeting, or another form of consultation.

Preparing for and running a public meeting

Reasons for meeting

Public meetings are an opportunity to distribute basic written information on the proposal and to explain and clarify the consultation process.

If attendance is modest, public meetings can be an appropriate forum for ongoing liaison with the community, particularly if there is written feedback provided to those attending. Project advocates should be wary of interpreting low turnouts at public meetings as a lack of opposition, or even support, for a project.

From the community's point of view, public meetings are a chance to demonstrate solidarity (and possibly opposition) at the outset. Indeed, some community representatives consider that public meetings should launch the consultation process. Therefore, it is desirable to be ready to respond to community demands for public meetings. In order to establish initial trust it may be useful to seek the assistance of residents' associations in organising any public meetings.

Preparation

- Advertise the date, time and venue widely in the community
- Invite all identified interest groups, organisations and potentially affected parties
- Prepare standard answers to anticipated questions
- Ensure that all the project team members attending the public meeting have a detailed and consistent understanding of the project
- Prepare clear visual aids
- Have information on the proposal, maps and plans available to be taken away.

On the day

- Have a local community leader or a professional facilitator acting as an independent chairperson adhere to a clear format and agenda
- Arrange for the advocate's local representatives, the manager of the facility and/or the eventual service provider to be present (as appropriate)
- Agree a protocol for the meeting at the outset

- Provide a handheld microphone to ensure that only one person can speak at a time
- Ask for any prepared statements at the beginning of the meeting
- Ask the community how it wishes to be consulted as the project progresses
- Invite those who attend to give contact details (for providing feedback)
- Distribute a survey asking opinion on specific issues to determine the opinions of all those in attendance.

4.10 Allow for feedback

It is important that any consultation process provides an opportunity for obtaining feedback from the community beyond a public meeting. The appropriate methods to use will depend on the scale of interest, the complexity of the project and the advocate's preferred timeframe and budget. Possible methods of obtaining feedback include:

- small group and individual meetings
- telephone and letter contact
- written comments.

Small group and individual meetings are effective for encouraging dialogue on the details of a proposed project. Such meetings also tend to attract people who are willing to participate. The benefits of small group and individual meetings include an ability to focus on specific issues or localities.

A log should be kept of all incoming and outgoing telephone calls and correspondence. Where there is widespread and ongoing interest in the project an electronic database could be used to record community concerns and the associated project response in an efficient and cost-effective manner.

Requests for written comments, in advance of the statutory submission process, can be helpful to identify community concerns. Written comments provide a vehicle for the community to express concerns and enable adverse effects to be mitigated prior to lodging a resource consent application or notice of requirement.

Make clear that these written comments are not formal statutory submissions and that the community will have an opportunity to lodge submissions to the council in due course.

Best practice

- Provide a means for the community to provide feedback on the proposal
- Offer an address and a telephone contact to answer questions on the project.

4.11 Respond to feedback

One principle of consultation, as defined by the Court of Appeal, is the requirement on the party obliged to consult to keep an open mind, including being ready to change the proposal, or even to start afresh. For this reason the advocate should retain in the proposal the flexibility to respond to community concerns. If it is to participate effectively, the community needs to be kept up to date with the evolving nature of the proposal.

If environmental effects are identified and there is no apparent modification of the project as a result of consultation, conditions may be imposed on the project through the RMA approval process to allay community concerns. This imposition of conditions can cause operational difficulties and is a risk for the advocate, particularly when time and financial constraints result in pressure not to challenge these conditions before the Environment Court.

A reasonable timeframe should be established for dealing with the community response and reporting back. Although consultation may be an iterative process there comes a point at which the applicant must judge that community concerns have been adequately addressed and it is appropriate to move into the formal RMA approval process.

Best practice

- Inform the community if changes are made to the project proposal, or mitigation measures are agreed as a result of the consultation process
- Consider proposing draft conditions in the application for resource consent or the notice of requirement to demonstrate the project's response to feedback
- Implement any agreement that is reached with any party on mitigation measures.



Section 5: Communication

Section 5: Communication

Consultation with the community for which a project is being considered includes not only the formal consultation process and activities connected with it but also the activities discussed below.

5.1 Have a communications strategy

A structured communications strategy will assist the advocate in maintaining the clarity and consistency of key messages throughout the consultation process. Communication that generates a broad awareness in the community of the proposed project increases the chances that all the relevant issues will be identified.

A communications strategy encompasses all those techniques used for public education and providing communities with information on a specific project including:

- project information brochures
- newsletters/ bulletins
- articles, editorials and press releases
- advertisements
- public notices
- flyers
- billboards
- displays
- the draft resource consent application or notice of requirement.

Best practice

- Design a communications strategy to prepare the community for involvement in the consultation process
- Copy all written material that is distributed to the local community to the media.

Designing a communications strategy

- identify the person(s) responsible for the content and implementation of the communications strategy
- identify the target audience
- prepare and agree the content of the project information brochure with the project team
- draft initial press release/ advertisement and/or other handout material
- agree timing of release of material, with reference to the relevant RMA process where appropriate
- determine method of distribution.

5.2 Provide information

Basic project information should be widely distributed and readily available at the outset of the process. As interest grows, it may be appropriate to produce supplementary information. Effective ways to disseminate further information include:

- summaries of commonly asked questions and answers
- community newsletters
- meeting records.

While targeted delivery of information to immediately affected parties is important, this information should also be readily available to the general community, including through schools and council service centres. If the community experiences difficulty in accessing basic written information this can create suspicion and frustration. Lack of access to information can subsequently become an issue diverting attention from discussion focusing on understanding the proposal and its potential effects.

Sometimes communities can request what is considered to be an excessive amount of information, perhaps on the characteristics of the users of the facility for example, rather than focussing on the adverse environmental effects of the proposal. The provision of this information is not required under the Privacy Act 1993. However, the provision of a broad-brush description of the type of people who will use the facility, for example, may facilitate an improved relationship with the community.

Government departments, in particular, need to have appropriate processes in place for dealing with requests for information under the Official Information Act 1982.

Best practice

- Distribute written information widely throughout the entire consultation process
- Specify where the community can obtain additional information
- Ensure that project information is accessible to different cultures, perhaps by providing translations.

Preparing a project information handout

Contents:

A project information handout should contain the following information (as appropriate):

- what the project is
- why it is needed
- why it is located in that particular region/ city/ area/ location
- the site selection process
- the anticipated effects and mitigation measures
- plans, diagrams and aerial photographs
- the consultation programme
- the RMA process (including the process for making a submission)
- any previous applications lodged or consultation undertaken
- timetable for construction
- contact details for obtaining more information.

Best practice

- Limit the basic project information handout to one to two pages of text, extended as appropriate with photos and graphics for clarity
- Provide written information at the appropriate level of detail
- Distribute the project information handout widely amongst the community interest
- Advise directly affected parties and adjacent landowners before they hear of the proposed project through the media or some other means
- Ensure that the person whose contact details are provided has the appropriate level of knowledge to answer the community's questions.

5.3 Be sure information and terminology are consistent

It is important to maintain the consistency of information provided to the community. One strategy is to prepare a basic project information brochure or community newsletter. This information is intended to be the basic facts of the proposal, with which all the project team members are familiar. Continual efforts will need to be made to ensure that any subsequent changes to the project in response to consultation are familiar to those involved in fronting the project to the public.

Best practice

- Prepare a basic project information brochure (with a date) to be distributed widely in the community
- Ensure that the consultation team is familiar with the proposal at the outset of the consultation process
- Hold regular briefings for the project team
- Consider nominating one primary spokesperson and define spokespersons for specific topics.

5.4 Liaise with the council

Council staff are a valuable source of local knowledge and in-house information, including the existence of splinter residents' groups. They are, therefore, an important contact when scoping the community of interest. The comments of the council planning staff on the proposed consultation process and venues for meetings can also be useful. Liaison with council staff during the preparation of the draft application or notice of requirement can minimise the risk that further information will be requested. Appropriate council contacts include:

- planners
- iwi liaison officers
- communications managers
- transportation planners
- asset managers/ operations staff
- community development staff.

It is important to liaise with council on key issues, but the decision on how to proceed is the responsibility of the advocate and should be taken in the context of the overall project. Council staff are not responsible for the quality or the outcome of the consultation process.

Best practice

- Liaise with council staff when scoping the community of interest and during the preparation of the draft RMA application or notice of requirement.

5.5 Maintain community liaison throughout the project

Communities are often concerned about the effects during the construction and operation phases of a project once RMA approval has been obtained. Some form of ongoing liaison with the community (whether or not this is required under alternative legislation) reassures the community that the advocate will continue to be responsive to community concerns and contributes to acceptance of the project. Ongoing liaison may take the form of community newsletters or a liaison group.

Best practice

- Propose ongoing liaison with the community during both the construction phase and operation of the project
- Provide feedback on the outcome of the formal RMA approval process, including an explanation of any conditions imposed on the consent or designation.

5.6 Use the media wisely

Any media strategy for consultation should exist within an overall communications strategy. Obtaining balanced media coverage depends on the advocate's relationship with the media, and can be labour intensive. It may be appropriate to purchase a display advertisement to communicate key issues and respond to community concerns.

Coverage in local papers and giveaways is at least as important as in the major daily, especially in rural areas. This is because local papers tend to reach more members of the community, particularly those concerned about local issues. Provided there is a responsible host, radio talkback interviews can also prove a good medium to convey information on the project.

Be aware that the national media context often impacts on projects. This is especially the case where the national media highlight adverse events occurring at other similar facilities or projects.

Best practice

- Initiate a relationship with the media before consultation commences
- Maintain an ongoing relationship with the media
- Provide a ready-to-use press release which explains the proposal and gives the advocate's view (although this may not always be published)
- Place display advertisements for meetings and invitations for written comments (where appropriate) in the public notices
- Report the project response to community concerns in a display advertisement
- Use the "alternative" media, for example residents' association newsletters.



Section 6: Case Studies

Section 6: Case Studies

6.1 Notice of Requirement – Secure Residential Treatment Facility

The proposal was to establish a secure residential treatment facility. Initially consultation took place on one preferred site and included a number of public meetings. Significant community opposition to the proposal caused the advocate to abandon the site and rethink the site-selection strategy.

A key outcome of the initial consultation experience was the establishment of a site selection committee. This committee comprised the advocate, the service provider, a local MP and representatives from the local council, education sector, health sector and tangata whenua.

The committee's terms of reference included preliminary site identification. A number of possible sites which met the criteria for accessibility, privacy, location and security were identified. A planning assessment and an initial evaluation resulted in the elimination of the least suitable sites. A shortlist of preferred sites was recommended for detailed evaluation. There was a consultation programme at each of these sites and the preferred site was chosen.

Consultation process

Public meetings were not part of the advocate's initial strategy but were subsequently demanded by the communities concerned. The specific methods used during consultation included:

- written information (including a brochure and information pack)
- public meetings
- small group and individual meetings
- telephone and letter contact
- written comments.

Issues raised by submitters

The site eventually selected was in an area of predominantly institutional and recreational land use. A notice of requirement was lodged with the local council. A number of submissions were received in opposition to the project (with some also in support). Issues raised by submitters included:

- impacts on property values
- threats to personal safety
- a possible decline in support for local facilities such as schools and sports clubs
- inadequate consultation.

Outcome of the statutory process

A commissioner heard the notice of requirement. The council's recommendation had conditions attached, and the advocate generally accepted these. The decision of the requiring authority regarding access to the site was taken to the Environment Court but was settled out of court.

Overall assessment of the consultation strategy

Despite some initial difficulties, particularly in identifying the community of interest, the consultation strategy contributed positively to a successful outcome. Indicators of success include the subsequent lack of reported concern about the project at the preferred site, the receipt of only 11 submissions in opposition and the ability of the consultation process to withstand scrutiny at the council hearing.

There were a number of aspects to the consultation strategy that worked well:

- There was an agreed consultation strategy and objectives, which meant that the project team was clear about the process to be undertaken.
- The small group meetings were perceived by the community as an effective way to be informed about the project and as an appropriate forum to discuss concerns.
- The use of written comments to obtain community views on alternative sites assisted in site selection.
- Feedback forms were provided, and a number of subsequent modifications were made to the project.
- Involvement of councillors in site selection reduced the risk of the proposal becoming politically controversial and encouraged local ownership for the outcome.
- Ongoing liaison was offered to the community and provided a useful mechanism to build trust.

Some aspects of the consultation that did not work as well related to timing. The timeframe for consultation was extremely short, which resulted in a number of organisational difficulties. Throughout the process, there was limited time for team briefing and debriefing, or for the familiarisation of the project team with written material. Despite attempts to ensure that the information given to the community was consistent, this did not always occur. This is partly a reflection of the large size of the project team and the short timeframe. In relation to timing, the community acknowledged that focused timeframes are important if the process is not to drag on.

Another aspect that did not work well related to the scope of the community of interest. Inadequate initial scoping of the community of interest led to an insufficient distribution of the project information. The community was very frustrated by this. In hindsight it is considered that residents' associations could have helped organise the consultation. The benefits of this approach might well have been community buy-in to the consultation methodology.

The agreed method had been to contact immediate neighbours and key stakeholders and then to provide public meetings if the wider community requested them. Given their concerns some community groups organised public meetings within days of receiving the initial information. Due to widespread and vociferous public concern, the project team had to quickly review the consultation strategy; this resulted in a perception amongst the community of a lack of preparedness.

While consultation on alternative sites resulted in a robust RMA process, it also led to criticism that the advocate was using divide and conquer tactics, despite this approach being the one preferred by the local site-selection committee.

The consultation process was more resource intensive and expensive than anticipated.

6.2 Notice of Requirement – Road Upgrade

A designation was sought to enable the upgrade of a road to improve capacity and safety. The adjacent land uses were primarily residential, business and commercial.

An initial round of consultation focused on the broad options available for capacity improvement. The community understood that the solution was *either* upgrading the existing route *or* building a new road. This was not the case, as the proposed upgrade provided an interim solution, which, when combined with the construction of a new road, would provide a long-term solution to the capacity problem.

A further round of consultation focused on design of the advocate's preferred option. The community said again at the beginning of the second consultation round that it preferred a new road. The necessity for the upgrade of the existing road, with or without the construction of a new road, was not understood. Consequently, at the hearing a number of opponents claimed that there had not been an opportunity to reconsider the options for local improvements if their preferred option, a new road, did not go ahead.

Consultation process

In general consultation with individuals and small groups was favoured over public meetings. The specific methods used during consultation included:

- written information
- public meetings
- small group and individual meetings
- telephone and letter contact.

Regular coordination meetings were held with council officers. Contact with the planning staff assisted early identification of the key issues and the RMA approvals required. A variety of council departments were consulted in their capacity as asset managers, service operators, parks and reserves managers, advocates for the community and landowners. Drafts of the relevant RMA applications and the assessment of environmental effects were prepared, and feedback on the adequacy of the information provided was sought.

Information packs were provided to the media (including advance copies of the newsletters) along with graphics in electronic format. The advocate discovered if a written press release was provided to the newspapers this was often printed word for word. The purpose of contact was to manage the profile of the project, to avoid capture of the project by interest groups and to distribute information cheaply and widely.

Issues raised by submitters

The majority of the submissions received were in opposition. Issues raised included:

- support for the construction of a new road
- clarification of specific design details
- safe access to individual properties
- inadequate consultation or that the outcomes of consultation were disregarded
- lack of genuine consideration of alternatives.

Outcome of the statutory process

Council recommended that the notice of requirement not be confirmed. The advocate rejected that recommendation but did advise that further work (including consultation) would be undertaken before any appeals was processed in the Environment Court. There were six appeals lodged.

Overall assessment of the consultation strategy

While there were a substantial number of submissions in opposition, most aspects of the consultation process were well planned and implemented. The substantive issue in council's decision not to confirm the notice of requirement was that there had been inadequate consideration of alternatives, rather than any criticism of the consultation undertaken.

There were a number of aspects to the consultation strategy that worked well:

- The community of interest was adequately scoped.
- The written information provided was adequate and clear.
- Requests for additional information were dealt with in a realistic timeframe and addressed the issues raised.
- Key community leaders were involved throughout the process.
- There was wide public knowledge of the project.
- The project advocate was closely involved in the consultation process.
- Small group and individual meetings were considered effective by the community (although from the advocate's perspective this was an expensive process).

Despite the fact that the technical approach to the consultation process was very good, the community did not understand or accept the necessity for the project. This resulted in some frustration in the community with the advocate's insistence on discussing local roading improvements. Only when lodging the notice of requirement was imminent did the community focus more fully on the options for local roading. This meant the community sought to continue consultation when the advocate felt that adequate opportunity had been given for the expression of community views.

The community considered that there were inconsistencies in the information provided and that this was one aspect where the consultation process did not work so well. Particular efforts were made to ensure consistency on information and terminology, including use of standard written material and a database for recording requests and project response. The database also recorded names and contact details and subsequent communication undertaken. In addition a communications and consultation strategy and a policy and procedures manual were prepared. Direct communication with the public was limited to key personnel on the project team. However, despite the care taken, consistency was still an issue.

6.3 Rollover of an Existing Designation – Existing Residential Treatment Centre

A designation was sought for an existing residential treatment centre catering for approximately 10 young persons. The site had been an institutional facility for disadvantaged children since the early part of the century. Following redevelopment of the site in the early 1990s the facility was designated in the district plan as an “institution”. The existing activities on the site include residential accommodation, a secure unit, an administration block, and recreational and educational facilities. The facility is located within a residential suburb.

Before the release of a proposed district plan, a local authority is required under the RMA to ask requiring authorities whether they wish to roll over (ie, continue) existing designations. A notice of requirement to carry the existing designation forward into the proposed district plan was lodged with the council. This included modifications to reflect the nature of the existing activity more clearly and to adjust the boundary of the designated site to exclude some surplus land. There was no proposal to expand or enlarge the facility.

Consultation process

No consultation was undertaken prior to the notice of requirement being lodged.

Issues raised by submitters

There were subsequently approximately 40 submissions received by the council, with the majority of these in opposition. Issues raised by submitters included:

- neighbourhood security, including the proximity of educational facilities
- the inappropriateness of the existing activity in a residential area
- a need for greater consultation and closer relations with the community
- adverse effects on amenity values, including noise effects
- concern about the facility’s commonly used name.

In response to community opposition, and concerns that the notice of requirement was not comprehensive in its description of activities, the advocate commissioned investigations into alternative sites and the environmental effects of the facility. A consultation programme was also implemented including:

- written information
- public meetings
- open days.

Public meetings were the community's chosen forum for consultation. There was a marked decline in the attendance levels as the consultation process progressed.

The advocate's regional manager and the facility manager took responsibility for the preparation and implementation of the consultation strategy.

Assistance from a consultant was obtained, and an independent facilitator was commissioned to chair the public meetings. These parties formed the core consultation team. In addition, a steering committee, comprising the advocate's senior management and legal and resource management advisors, took a national overview role.

Outcome of the statutory process

As a result of the additional work and consultation programme some minor modifications were made to the project. The council heard the notice of requirement and recommended that it be confirmed, subject to conditions. There were no appeals lodged.

Overall assessment of the consultation strategy

Despite the lack of consultation undertaken prior to the notice of requirement being lodged the eventual process appears to have resulted in a successful outcome for all parties involved. Indicators of this success are that RMA approval was granted and trust has subsequently been established between the advocate and the community. The decline in participation at the public meetings over time might indicate that the concerns of some submitters were addressed.

There were several aspects to the consultation strategy that worked well:

- The advocate was proactive and positive in undertaking the consultation programme once it became clear that the community had outstanding issues.
- A clear consultation strategy was developed and implemented systematically.
- The consultation team was relatively small and well coordinated.
- Key personnel involved in the operation of the facility were involved in the consultation.
- The consultation team was perceived by the community as being open, approachable and prepared to listen.
- The community was able to specify its preferred forum for consultation. As a result, public meetings were an effective consultation method. (This was likely to have been assisted by the use of an independent facilitator.)
- Open days provided an opportunity for the local community and the advocate to interact.

- Providing minutes from meetings, question and answer sheets and quarterly reports helped in allaying some concerns and in ensuring consistency of information.
- Changes were made to the project in response to some of the community's concerns.
- Feedback on the outcomes of consultation was given to the community through subsequent public meetings.

The main concern about the consultation process raised by the community and the council was the lack of previous consultation. It was considered that the nature of the facility had altered over time and the decision to consult was too late. Initially, the community viewed the consultation as merely a reaction to public outcry, rather than as a positive exercise. As a result, it took a significant amount of time for the advocate to recover ground lost with the community through not consulting earlier.

Other aspects of the consultation that did not work so well include “consultation fatigue”. While the community had sufficient time and opportunity to make its views known, it was considered that the timeframe was too long with significant amounts of community time being required.

There were also concerns regarding public understanding of the designation process, a relatively complicated procedure that is unfamiliar to most people.

6.4 Resource Consent – Medium-term Psychiatric Rehabilitation Facility

A resource consent application was lodged for a medium-term psychiatric rehabilitation facility for approximately 10 residents. The facility is run by a charitable trust and the property is owned by a government agency.

The resource consent application specified that residents would be adults who had experienced a short period of being acutely unwell but who no longer needed hospital care. Excluded were those who were non-compliant with medication, violent or would behave in unacceptable ways (including sexual). Medium-term rehabilitation is a transition service rather than long-term supported accommodation. The application indicated 24-hour on-site support, with residents having access to multidisciplinary professionals from the local mental health team. The activities on site were anticipated to be those which would take place in any normal household, and there was no formal on-site treatment programme.

The site uses existing buildings and is located on the transition between a commercial area and residential housing. The previous use of the site was as a health centre and outpatient clinic for people with mental health problems and long-term psychiatric disability.

Consultation process

There was no formal consultation programme undertaken before the resource consent application was lodged. It is the policy of the government agency that owns the property that consultation is the responsibility of the service provider. The chosen strategy of the service provider, in order to avoid accentuating the issue, was to not undertake consultation. Discrimination is considered to be a significant issue.

The advocate distributed information on the project to the community on the same day that the application was lodged with the council. The community subsequently arranged a number of public meetings. Additional information on the project was requested but the service provider did not provide it, citing restrictions imposed by the Privacy Act 1993.

Issues raised by submitters

After an awareness campaign run by the community, 70 submissions were received in opposition to the project, with six received in support. Issues raised by submitters included:

- safety, particularly the proximity of a primary school
- traffic
- noise
- residential amenity
- inadequate consultation.

Outcome of the statutory process

Council's decision was in favour of the applicant. Two appeals were lodged with the Environment Court. After mediation, a consent order with the board of trustees of the adjacent school was agreed. This included a condition requiring the formation of a community liaison group. The other appellant group subsequently withdrew its appeal. The facility has commenced operations.

Overall assessment of the consultation strategy

The specific strategy implemented was to not consult in order to avoid raising the public profile of the facility. The consultation that subsequently occurred as a result of the public concern was limited and occurred late in the RMA process (just prior to the council hearing). As the community generally drove the consultation, it is difficult to comment on the aspects that worked well and not so well.

The application was successful in that the facility is now operational. However, as a result of this strategy there is considerable residual resentment within the community, even after the appeals have been resolved or withdrawn. Some community representatives feel that this project has never been fully and openly debated.

The service provider was concerned that, if a consultation process were undertaken, the focus of the public's opposition would be on the type of person to be accommodated. It was considered that the disclosure of information about the persons to be accommodated is not relevant to the public debate under the RMA and potentially infringes the principles of the Privacy Act 1993. The service provider did present evidence relating to mental health and its associated risks at the hearing, but the council planner felt that reliance on discrimination and human rights arguments did not help in persuading the community that there was no danger from the users of the facility.

A key issue is the need to consider the extent of information to be provided on the type of users when preparing applications for this type of facility.

A community liaison group has been established, and this is operating effectively. There is, however, some criticism that the wider community has never been informed of the membership of the liaison committee. As the main function of the community liaison group is the reporting of incidents, there has been little activity to date. A function of the liaison group could be provide a regular report on the number of patients at the facility, length of stay, the number of staff and length of employment. This might demonstrate some continuity and stability to the operation of the facility.

6.5 Resource Consent – Supported Housing Project

A resource consent application was lodged for a supported housing project for psychiatric clients requiring 24-hour care from a qualified caregiver. The activity as proposed was residential, with no treatment on site. The site is a rural lifestyle block, and the proposal used existing dwellings, with no significant alterations proposed. The surrounding land uses are rural, with the closest dwelling approximately 370 metres away. The site is on a state highway, approximately eight kilometres from a small rural service centre. There was a previous proposal to establish a similar facility on a residential property in this rural service centre, but this was not pursued due to considerable public opposition.

The council advised that the application might be able to proceed without notification, subject to the written approval of adjacent landowners. While these approvals were obtained, adverse public reaction prompted the council to advise that the application would be notified.

Consultation process

It is unlikely that all parties to a proposal will ever agree on the ideal time to start consultation. The advocate argued that it is appropriate to undertake consultation after site selection, as this enables specific questions to be dealt with. A number of sites in the district had been previously considered and, given the extent of the opposition, consultation any earlier was unlikely to have changed the minds of the opponents.

On the other hand, the council planner and the community considered that the timing of the consultation was too late and should have occurred before identification of a preferred site. Earlier consultation could have enabled relationships to be established before people becoming entrenched in their views. This in turn might have enabled changes to be made to the project.

The parties involved included the project advocate, the Regional Health Authority (responsible for the purchase of health and disability services for the people of the area) and an independent consultation-process consultant. There appears to have been considerable confusion regarding which organisation was leading the consultation and the appropriate contacts for obtaining additional information. Generally, the community felt that the project advocate should have been more involved in the consultation, as the independent consultant was not always able to answer questions.

The specific methods used during consultation included:

- written information
- individual meetings
- public education programme.

The community reported difficulties in obtaining additional information on the project. When additional information was provided, it was often given verbally and was often conflicting or non-committal.

There was no formal opportunity for the community to express its views on the project, other than through the RMA submission process. Consequently, the community does not feel that its particular concerns were considered until the council hearing.

Issues raised by submitters

Twenty-two submissions were received, with 11 in support, one expressing conditional support and 10 opposed (including a petition with approximately 1000 signatures). Issues raised by submitters included:

- neighbourhood security
- inexperience of the service provider
- inappropriateness of the site (remoteness, distance from services, lack of integration into the community)
- the safety of the users of the facility
- inconsistency of information
- adverse effects on property prices.

Outcome of the statutory process

While expressing some criticism of the initial information provided and the lack of consultation undertaken, the council granted consent to the application. In response to community concerns, a number of conditions were imposed on the resource consent. A residents' group lodged an appeal with the Environment Court, but this was subsequently withdrawn due to concerns about costs.

Overall assessment of the consultation strategy

While the application was successful in that the facility was granted consent and is operational, it appears that the consultation that did occur was unsatisfactory. This is evidenced by continued negativity in the community about the project and considerable residual anger about the time and costs of the process. It is apparent that the views of the advocate and the community became entrenched very early on in the process with little trust being established. This lack of trust meant that it was difficult for any meaningful consultation to be undertaken.

There are likely to have been a number of factors that contributed to this polarisation:

- There was increased public awareness of the facility due to an unsuccessful previous proposal to establish the facility in a nearby township.
- The attempt to seek RMA approval on a non-notified basis with limited consultation was interpreted by the community as an attempt to sneak the proposal through.
- There was frustration in the community with the fact that the proposal arose from a government policy that could not be challenged through the RMA process.

Another indicator of a less successful outcome is that a number of the conditions placed on the facility by council could adversely affect the day-to-day operation of the facility. It is likely that these conditions were placed on the consent to allay community fears.

There are a number of actions that may have assisted in achieving a more positive consultation process and overall outcome for this project:

- facilitated debate in the local community about the specific need for this type of facility to achieve community buy-in
- preparation of an agreed consultation strategy which included consideration of previous applications and acknowledged the sensitivities of the community
- wider consultation within the community using organised public forums with an independent chairperson
- clarification of which organisation was the lead and key contact for the consultation process
- provision of clear and concise written information to the wider community at the outset of the project
- an offer of ongoing consultation or the establishment of a community liaison group.

6.6 Permitted Activity (Certificate of Compliance) – Meatworks

A site for a modern meatworks plant was found in an industrial zone with access from a state highway. The proposed activity was able to comply with the rules for the industrial zone and building commenced. The community subsequently discovered the proposed use and complained to the council.

The advocate had backed away from a previous site due to community opposition. In that instance, the proposed use was permitted but the council, after prompting from the community, required consent for a non-complying activity on aspects of building non-compliance. The advocate was unhappy with this decision in view of that fact that the building already existed.

Communication process

As the proposed project complied with the rules for the industrial zone, no consultation was undertaken. Some information was provided to the community in response to its concerns after the issue became public.

Issues raised by the community

Issues raised by the community included:

- odour
- noise
- traffic concerns
- effluent from stock trucks.

Outcome of the statutory process

The council considered that the proposed meatworks could comply with all the relevant permitted activity conditions and granted a certificate of compliance. The community did not pursue the matter to the Environment Court.

Overall assessment of the communication strategy

The community did not trust the information on the anticipated effects of the plant provided by the advocate. Community opposition abated once the meatworks was operational because it was evident that the plant was able to contain its odour and noise effects.

From the perspective of the advocate, the process used worked well in that the plant is now operational. The positive outcome for both the advocate and the community is primarily due to:

- an appropriate site being chosen for the proposed activity
- compliance with the specified environmental performance standards
- the overall maintenance of high standards of operation by the advocate.

6.7 Permitted Activity (Certificate of Compliance) – Group Home

A certificate of compliance was sought for a group home for five intellectually disabled people. The application specified 24-hour on-site support. The site was four hectares in size and was situated in a rural residential area.

The activity was permitted under the provisions of the relevant district plan. The process generally used by the advocate has been to make a conditional offer on the property and then to apply for a certificate of compliance. The certificate of compliance was granted, but four days before the advocate was ready to go unconditional on the property the community became aware of the proposal.

Communication process

The advocate had withdrawn a previous application for a certificate of compliance in a different area because the media had become involved and community opposition was widespread. As a result of this experience the advocate prepared an information and communications strategy to be implemented when it went unconditional on the property. This process of information giving was unable to proceed as planned because when the community became aware of the proposal it called two public meetings.

Issues raised by the community

Issues raised by the community included:

- the proposed residents were not welcome in an area of lifestyle blocks that the current owners had worked hard to purchase
- risks to personal safety
- risks to residents from farm animals
- the ability of the advocate to manage a rural residential property
- threat to property values.

Initially the public response against the proposal was very strong. The residents' association threatened to apply to the High Court for an injunction.

Outcome of the statutory process

The council granted the proposal a certificate of compliance.

Overall assessment of the communication strategy

When the extent of the adverse reaction became apparent, the advocate's strategy was to contact individual adjoining owners and occupiers. One-to-one meetings and phone calls reassured the community that adverse effects were unlikely. Significant amounts of information on the absence of adverse effects on property values in similar situations were provided.

Within four days from the community becoming aware of the proposal to the advocate lodging an unconditional offer on the property the community began to accept that the proposed residents had a right to live in the area.

It is considered that the primary reason for this shift in attitude is that the advocate personally fronted the project at both the public meetings and with individuals. Another contributing factor was the advocate's straightforward and consistent approach to providing information. In addition, when the advocate could not guarantee that any perceived adverse effects would not occur (such as residents being kicked by a horse) this was acknowledged. It appears that the community appreciated both the information that was provided and the responsible way in which it was presented.

6.8 Permitted Activity (No Certificate of Compliance) – Supported Residential Accommodation

Supported residential accommodation for 12 people with psychiatric disability was established on two adjoining residential properties. In order for the properties to be suitable for supported housing, some major renovations were required. These properties operate jointly and 24-hour support is provided to the residents, although there is no treatment or rehabilitation on site.

The surrounding land use is residential.

Communication process

The supported residential accommodation was established under the belief that the activity was permitted under the relevant resource management plan. Accordingly no consultation was undertaken and the activity simply commenced operations.

Issues raised by the community

The adjoining owners and occupiers became aware of the intended use for the properties during the renovations. Community awareness of the proposed activity was also raised when some of the residents attended neighbourhood watch group meetings prior to moving in. No adverse community reaction occurred, although some complaints were received about contractors blocking driveways.

Outcome of the statutory process

The advocate now has a standard policy of seeking certificates of compliance for all its properties prior to the commencement of operations. A certificate of compliance is currently being sought for this project in order to regularise the situation. It is not intended to undertake any consultation with the adjoining owners or occupiers as no complaints have ever been received.

Overall assessment of the communication strategy

Often where a proposed activity is permitted, operations can simply commence without any consultation being undertaken. However, there is always a risk that communities may oppose projects even when they are permitted by the relevant council plan. Project advocates must therefore always be prepared to address the concerns of neighbouring landowners and the community as they occur.



Section 7: Further Information

Section 7: Further Information

Web pages

- Ministry for the Environment – <http://www.mfe.govt.nz>

Print publications

- Ministry for the Environment (1998), *Guide to the Resource Management Act*
- Ministry for the Environment (1999), *Pre-hearing Meetings: A practical guide for councils*
- Ministry for the Environment (1999) *A Guide to Preparing a Basic AEE*
- Ministry for the Environment (1999), *Case Law on Tangata Whenua Consultation*
- Ministry of Health, Ministry for the Environment (1999) *Towards National Guidelines for Managing the Effects of Radiofrequency Transmitters: A discussion document*
- Ministry of Internal Affairs (1998) *Community Development Resource Kit*

Ministry for the Environment pamphlets

- *Awarding of Costs by the Environment Court*
- *Introduction to the Resource Management Act*
- *Making Resource Consent Applications*
- *Making Submissions on Notified Resource Consents*



Section 8: Terminology

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Certificate of compliance: issued by the council and confirms that any particular activity is a permitted activity under the relevant plan provisions or could be lawfully carried out without a resource consent.

Conditions: in relation to plans and resource consents, includes terms, standards, restrictions and prohibitions.

Designation: a provision in a District Plan to give effect to a Notice of Requirement made by a Requiring Authority.

Effects: as defined in the RMA include:

- any positive or adverse effect
- any temporary or permanent effect
- any past present or future effect
- any cumulative effect that arises over time or in combination with other effects, regardless of the scale, intensity, duration or frequency of the effect, and including any potential effect of high probability and any potential effect of low probability which has a high potential impact.

NIMBY: Not In My Back Yard.

Notice of Requirement: a Requiring Authority which has financial responsibility for a public work may give notice to a council of its requirement for a designation.

Permitted activity: an activity that is allowed by a plan without a resource consent if it complies in all respects with any conditions specified in the plan.

Requiring Authority: a Minister of the Crown, a local authority or a network utility operator (for example, an electricity distributor, airport authority or roading operator) who has been approved as a Requiring Authority under the RMA.

Resource consent: consent issued by a council to do something that would otherwise contravene a rule in a plan, and includes conditions on the consent.

Resource Management Act 1991 (RMA): an effects-based statute focusing on sustainable environmental management. It is administered by the Ministry for the Environment and implemented for the most part by territorial authorities.

Rollover of existing designations: before a council prepares a proposed plan it must invite Requiring Authorities which have a designation in the preceding plan that has not lapsed to give notice to the council that the Requiring Authority requires the designation to be included in the proposed plan, with or without modification.

Tangata whenua: in relation to a particular area, means the iwi or hapu that holds mana whenua (customary authority) over that area.

Treaty of Waitangi: the Treaty of Waitangi as set out in English and in Maori in the First Schedule to the Treaty of Waitangi Act 1975.



Section 9:

List of Relevant Case Law

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9.1 Principles of consultation

Wellington International Airport Ltd v Air NZ [1991] 1 NZLR 671

9.2 Consultation for designations

Malfroy Area Residents Action Group v Rotorua District Council A 92/98.

9.3 Consultation with tangata whenua

Gill v Rotorua District Council [1993] 2 NZRMA 604

Haddon v Auckland Regional Authority [1994] NZRMA 49

Quarantine Waste Ltd v Waste Resources Ltd [1994] NZRMA 529 (HC)

9.4 Psychological effects

Meadow Mushrooms Ltd v Paparua County Council (1977) 6 NZTPA 327

Duncan v Thames Coromandel Council (1980) 7 NZTPA 233

Liquigas v Manukau City Council (1983) 9 NZTPA 193

Shell Oil New Zealand v Auckland City Council [1993] NZRMA 363

Trans Power v Rodney District Council A85/94

Ammon v New Plymouth District Council W27/97

Department of Corrections v Dunedin City Council C131/97

Kapiti Coast District Council v Raika [1997] NZRMA 218

McIntyre v Christchurch City Council [1996] NZRMA 289)

Shirley Primary School v Telecom Mobile Communications Ltd [1999] NZRMA 66 (EC)

9.5 Property values

Goldfinch v Auckland City Council 1996 NZRMA 97

MacTavish v Dunedin City Council CP53/96

Prestige Print (1965) Ltd v Wellington City Council W94/95

Bunnick v Waikato District Council A42/96

Faulkner v Gisborne District Council [1995] 3 NZLR 362

Imrie Family Trust v Whangarei District Council [1994] NZRMA 453

Queenstown Property Holdings Limited v Queenstown District Council [1998] NZRMA

9.6 Culturally and socially objectionable matters

Zdrahal v Wellington City Council [1995] NZRMA 289.

