

Proposed Plan Submission Analysis

A report and good practice guide on the assessment and management of those submissions made under the Resource Management Act having significant environmental effects.

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Executive Summary

This document was prepared as a response to a letter and report (ref: CHR 32-1 1998075) sent to the Ministry for the Environment (MfE) from the Parliamentary Commissioner for the Environment (PCE). The PCE raised concerns about the adequacy of the provisions contained in the Resource Management Act 1991 (RMA) relating to the approval of submissions made on regional or district plans where the impact of those submissions is likely to have significant environmental effects.

The aims of this report are to:

- assess the perceived weaknesses of the resource management plan process when analysing submissions with significant environmental effects and
- provide guidance as to how local authorities should manage submissions giving consideration to initiating a variation or plan change under the RMA.

The report provides a summary of the relevant provisions of the RMA as they relate to plan notification, submissions and decisions on resource management plans, and the variation and plan change process. Five case studies have been used to highlight specific issues that councils have had to address when assessing submissions on plans. The case studies range from a council making a submission on its own plan to provide for a regional stadium, through to a case involving over 1400 submitters opposing an increase in residential densities.

Also included within the document is a good practice guide to assist councils in their deliberations so that all relevant matters pertaining to a particular issue or submission can be appropriately considered. The guide places an emphasis on ensuring that the plan submission and decision-making process is open to the public and the views of all parties are considered in a cost effective way.

The good practice guide should be seen as only one mechanism that could be used to ensure all relevant matters are considered in the assessment of submissions made on proposed plans. A more complex issue is how to more effectively inform landowners and the general public about the plan process and the implications of being parties to the plan submission and decision-making process. This matter is an issue that needs further consideration by the resource management profession.

This report concludes that the range and complexity of issues emerging from submissions on proposed plans has meant that it will be difficult to make changes to the RMA that would ensure that all potentially affected parties have the ability to influence the plan decision-making process. These matters cannot easily be resolved by legislative change. Therefore the onus is on individual councils to ensure that they operate as fair and reasonable arbiters in the process.

1 Introduction

This report has been commissioned by the Ministry for the Environment (MfE) in response to concerns raised by the Parliamentary Commissioner for the Environment (PCE) about the adequacy of the provisions in the Resource Management Act (RMA) relating to the acceptance of submissions made on regional or district plans where the impact of those submissions likely to have significant environmental effects.

1.1 Aim of this Report

The aims of this report are to:

- assess the perceived weaknesses of the resource management plan process when analysing submissions with significant environmental effects
- provide guidance as to how local authorities should manage submissions giving consideration to initiating a variation or plan change under the RMA.

This report investigates the PCE's concerns that councils firstly have the ability to accept submissions on proposed plans that may adversely impact on persons not party to the process, and secondly, whether or not those submissions which have significant effects are able to be appropriately and effectively assessed in terms of their effects on the environment. This report considers whether there are sufficient safeguards contained within the RMA to ensure that councils are able to effectively assess submissions or whether it is more a matter of good practice.

The methodology adopted for this report was to:

1. identify why this report has been undertaken
2. provide a summary of the relevant provisions of the RMA as they relate to submissions and decisions on resource management plans, and the variation and plan change process
3. give a brief summary of five case studies with an assessment of the issues as they relate to the aim of this report
4. identify a good practice guide with recommendations on how the matters identified in 1 to 3 above could be addressed.

2 Background

Dr J Morgan Williams, from the PCE wrote to the Ministry for the Environment on the 30 September 1998, expressing concern about the adequacy of the provisions contained in the RMA relating to information requirements associated with making submissions on plans (ref: CHR 32-1 1998075). The letter and report from the PCE was prompted by a formal complaint from Christchurch City residents who requested that the PCE undertake a review of a Christchurch City Council (CCC) officer's recommendation to the City Plan Hearings Committee to favour a rezoning request on land known as 'Montgomery Spur'. The detail of the CCC recommendation was to accept in part three submissions that requested the re-zoning of an area of land from 'Rural Hills' to 'Living Hills'.

In his letter, the PCE stated:

"I believe the problem results from a possible deficiency in the Resource Management Act 1991 (RMA). The RMA does not require submitters requesting changes to a proposed plan to provide an assessment of effects (AEE) where environmental effects are anticipated. This is in contrast with the requirements for requests to change operative plans where an AEE is obligatory before requests are notified.

This deficiency is of concern if owners of land make extensive use of the RMA plan review processes to obtain de facto approval for proposals likely to significantly change the character of an area (or otherwise enhance the values placed on the environment by some individuals and groups at the expense of other values).

I do not know of any easy way to address this problem legislatively that would not further complicate the plan making provisions of the RMA. Perhaps the answer lies more in good practice and for Councils to research and apply more innovative ways for residents and ratepayers to get access to information on submission request effects.

However, before any action is taken an assessment is required of the extent to which the plan review process is used in the way I have outlined."

3 The Public Notification, Summary of Submissions and Hearing Provisions of the RMA

The First Schedule of the RMA sets out the submission and hearings process that must be undertaken once resource management plans are notified.

The main steps in this process are notification, summary of submissions, further submissions, and plan hearings.

3.1 Public Notification

Councils are required to publish a public notice informing the public that the proposed plan is notified and that submissions can be lodged in support or opposition to that plan. The public notice must state that council has to receive submissions within at least 40 working days of the date of notification.

A copy of the public notice and any other further information must be served on every person whose name appears on the occupiers column of the valuation roll; or this information must be circulated via a publication or circular which is sent to all residential properties and post office box addresses in the affected area.

The latter is the most commonly used form of notifying affected parties. This can mean that some people may not get to observe the notice. A local authority must however notify any other persons they consider directly affected persons.

3.2 Summary of Submissions

Following the closing date of submissions, the council is required to summarise all the submissions received and advertise through a prominent advertisement in a newspaper or circular, the availability of this summary. A local authority is also required to send a copy of the public notice to all persons who made submissions on the plan.

3.3 Further Submissions

Any person may then lodge a further submission either in support or opposition to a submission. A copy of a further submission must be served on the person/s who made the original submission.

In *Hilder v Otago Regional Council (C122/97)* Judge Skelton described the purpose of the submission process.

“The submission and further submission procedure is designed to ensure there is full and widespread public knowledge of any proposal to amend a publicly notified

plan so that further submissions can be lodged either in support of or in opposition to such a proposal.”

3.4 Plan Hearings

Once submissions have been received, the council then holds hearings. These enable submitters and further submitters to provide evidence to the council in support of their submissions. The hearings process allows for all parties who made a submission or a further submission to be party to the plan decision-making process. If a party or parties to the proceedings are unhappy with a decision made by a local authority they can refer the decision/s to the Environment Court.

A council has a range of decision-making options following the hearing of submissions. It can accept the submission, accept it in part, or reject the submission. Council's may also reject a submission but resolve to initiate a variation if it is considered that the submission has raised issues that should be changed in the proposed plan. A council may agree with the intent of the submission but not be able to approve the submission. This may occur in instances where other potentially affected parties have not had an opportunity to be party to the plan submission process, or that the submission was worded in such a way that it did not specifically seek the change that would be required to resolve the issue. The plan variation and plan change processes therefore provide the opportunity for these matters to be addressed.

3.5 Potential Weaknesses in the Plan Notification, Submission and Hearings Process

3.5.1 Potential Weaknesses

There are a number of potential weaknesses during the approval process of a statutory plan that may disadvantage parties. These include:

- a council's assessments as to who is or is not directly affected by a plan provision. This assessment can be difficult where it involves plan provisions that are general and not site specific.
- the difficulty of effectively summarising poorly worded or specified submissions in the summary of submissions report
- ensuring that submissions have been correctly labelled and catalogued in the summary of submissions report
- the complex nature of both the RMA plans and the plan development process means that some members of the general public (and practitioners) can have difficulty understanding the effect of a plans provisions, and submissions made on plans. This can create a difficulty in identifying how they are affected and the necessity of making a submission.
- there is no requirement for submitters to serve a copy of their submission on persons who may be 'directly affected' by the acceptance of a submission

- if people do not lodge a submission or further submissions they do not have standing to be heard in further proceedings; nor do they have any appeal rights (excluding those under section 274 RMA).

3.5.2 Information Requirements

There is no information requirement (such as an assessment of environmental effects), placed on a person(s) who makes a submission on a proposed plan. Submissions can be wide ranging and may have significant effects if the relief sought is granted. This means that councils must be careful to make decisions that can be justified in terms of section 32 of the RMA.

However, it is a standard practice for some submitters to provide some type of evidence to the council. This is often in the form of an assessment of environmental effects, in order to persuade the council to approve their submission or further submission. There is nothing in the RMA that prevents councils from informally requesting more information on submissions to proposed plans, while at the same time making it clear that if such information is not forthcoming, the submission is likely to be declined. Further information requests are particularly relevant where a submission is very specific or relates to the proposed use or development of a particular site.

It is considered that the RMA in its current form provides sufficient flexibility for councils to decide whether it is necessary to require additional detailed information from a submitter on their submission. The onus and responsibility lies with the council that any decisions made on submissions can be fully justified in terms of Part II and section 32 of the RMA. This latter point is highlighted in Case Study 5 'Capital Coast Health v Wellington City Council'.

4 Differences between the Variation and Plan Change Processes

4.1 Plan Variations

There is an important distinction between plan variations and plan changes. Councils initiate variations on proposed district plans. Councils ensure that there is sufficient information available, that the variation is consistent with the purpose and principles of the RMA, and that it meets the requirements of section 32 of the RMA.

4.2 Plan Changes

Any person can initiate a plan change (council included). In this situation it is the responsibility of the applicant to provide the necessary information and justification, and to undertake the appropriate consultation in order to satisfy the council that the change to the plan should be approved.

Councils also have the ability to reject a request for a plan change. These criteria are set out in Clause 25(4) of the First Schedule of the RMA.

5 Case Studies

5.1 Case Study 1: Montgomery Spur

5.1.1 Introduction

This case relates to a recommendation by a Christchurch City Council (CCC) officer to a district plan hearings committee to re-zone land based on three submissions and three further submissions. The issue has since received a lot of publicity and has raised concerns from local residents who were not aware of the original submissions and their development implications.

5.1.2 Summary of the Case

Three submitters sought that the land known as 'Montgomery Spur' be re-zoned from 'Rural Hills' to 'Living Hills' in the CCC Proposed District Plan. This would allow for development of the land for residential purposes. Three further submissions were received, one of which was a joint submission from two residents.

Council planning staff recommended that the elevated parts of the land be retained as open space, and that the balance land be re-zoned to 'Living Hills'. It is important to note that the PCE letter and report previously referred to, indicates that the CCC appeared to have correctly followed the plan notification and submission procedure as required by the RMA.

Prior to the hearing, CCC staff prepared a number of reports to assess various aspects of the possible development of this land for 'urban' living. These reports related to traffic, landscape and visual impact issues, water supply and drainage. Based on these impact assessments, the planning officer recommended that development (as requested) be permitted in the middle and lower portions of 'Montgomery Spur' in exchange for the secured protection of land higher up on the Port Hills for its "important natural, ecological and landscape values".

The hearing on these submissions was held on 19 and 20 February 1998. An article appeared in *The Press* on 2 March 1998 that discussed the submissions and raised concerns about the possible development of the land on 'Montgomery Spur' for residential purposes.

A group of residents, who did not lodge any submissions or further submissions, then wrote to the PCE with their concerns. In May 1998, CCC also received complaints from the residents about whether two of the submissions were properly referenced in the summary of decisions. The aggrieved residents were of the opinion that this possible error meant that they were unaware of the submissions that had been lodged in respect of the 'Montgomery Spur' land and that they had therefore missed the opportunity to make further submissions. CCC sought a declaration as to whether the submissions were correctly referenced. The Environment Court's declaration ruled that the rezoning request submissions needed to be re-notified (ref: c71/99) because of a referencing error. Nine hundred and fifty additional submissions have since been received and CCC is to hold hearings in mid-April 2000.

5.1.3 Issues

- a) The main issue is that a number of residents in the area were not aware of the submissions or the implications of the submissions. They did not lodge further submissions and therefore were not able to be party to the hearing and decision-making process. This raises wider issues about how to effectively inform all potentially affected parties of submissions received on plans.
- b) Members of the general public do not easily understand the district plan submission and hearing process, and the plans themselves may often be long and complex documents.
- c) There appears to have been insufficient information supplied with the submissions for council to be satisfied that the proposed future development would be consistent with the requirements of the RMA. CCC therefore chose to undertake detailed assessments to assess the environmental impact of the possible development of the land for 'urban' use.

5.2 Case Study 2: North Shore City Council v Housing New Zealand Limited

5.2.1 Introduction

This case highlights the importance of lodging submissions on plans and how important the summary of submissions can be in informing the public of submissions made. It also highlights how strong community opposition to plan provisions can result in local authorities making significant amendments to their plans.

5.2.2 Summary of the Case

This case relates to submissions and further submissions lodged on the North Shore City Proposed District Plan in response to the 'Residential 6' zone density provisions contained in the plan. The zone provided for residential intensification around certain commercial centres. The following selection criteria was used to select these areas:

- proximity to commercial centres to allow easy walking access
- areas which are suitable for more intensive development and which have potential for future intensification
- areas of environmental/landscape or heritage value were excluded.

A number of areas were chosen based on the above criteria, including Northcote, Beachhaven, and Glenfield. These were areas where Housing New Zealand Ltd (HNZ) was a significant landowner.

The effect of the change in provision was to allow for the comprehensive residential development of sites with a minimum allotment size of 1500m² down to a new minimum of 150m² per site. This was subject to the specific bulk and location requirements.

HNZ was supportive of these provisions but did not lodge a submission in support. There were 1400 submissions received on the change to 'Residential 6' zone provisions, of which most were in opposition. It was only as a result of reading the summary of submissions that HNZ

became aware of the public concern about the provisions as proposed. HNZ then lodged a further submission in opposition to those submissions seeking the deletion of the residential 6 zones and the raising of the minimum density requirements.

HNZ were able to present their case to the district plan submissions committee. The council released decisions on this matter and has in some cases removed the 'Residential 6' zoning altogether, and in other cases has reduced the extent of the area zoned. Of main concern to HNZ is the changed zoning of land in an area referred to as the 'Northcote Block' from 'Residential 6 to 4A'. HNZ owns 10 hectares of land containing 209 units, some of which are three storeys, some duplex and some single house properties. The density requirements in this area for sites in excess of 1500 m² have changed from 150 m² per unit to 350m² per unit. For sites of less than 1500m² the density requirements have changed from 300m² to 350m². HNZ have since referred these decisions to the Environment Court. At the time of writing this report the case had not yet been heard.

5.2.3 Issues

- a) HNZ is a significant landowner in the areas relating to this issue. It has been directly affected by changes to the plan provisions as a consequence of the submission and hearings process. However, there is no mechanism to ensure that it, as a directly affected landowner, can be individually notified of submissions made on plans. This means that the summary of submissions report becomes a very important way of informing landowners and the public of the potential effect of submissions made on plans.
- b) An alternative consideration to (a) above, is that there are a significant number of directly affected parties, and it would be a very costly and time consuming process to require either the council, or individual submitters, to notify those parties who would be directly affected by a particular submission. The process of determining who might potentially be directly affected would also vary depending on the nature of the submission.
- c) This case study is an example of how important it is to lodge further submissions and to be party to the plan submission and decision-making process. In this case, HNZ were able to make a further submission and be party to the plan decision-making process and have been able to refer the subsequent decision to the Environment Court.
- d) It also highlights how important it is to lodge submissions when provisions are supported.

5.3 Case Study 3: Manawatu District Proposed District Plan – Submission by the Ministry of Agriculture

5.3.1 Introduction

This case study relates to a submission made on the subdivision provisions of the Manawatu Proposed District Plan. The submission sought a fundamental change to rural provisions within the plan. Palmerston North City, a neighbouring local authority, made a further submission in opposition to the submission.

5.3.2 Summary of the Case

A submission lodged by the Ministry of Agriculture (MAF) challenged the approach used to provide for rural subdivision in the rural zones and in particular the 'Rural 1' zone, which related to the protection of versatile soils. MAF opposed the plan provision that allows for subdivision down to a minimum of eight hectares in the 'Rural 1' zone and four hectares in the 'Rural 2' zone as a controlled activity. Subdivision below these minimum lot sizes would be a non-complying activity.

MAF requested that all rural subdivision be a controlled activity with no minimum allotment size and that each application be assessed against a number of specified criteria.

This submission was summarised correctly in the summary of submissions and Palmerston North City Council (PNCC) lodged a further submission in opposition to this submission. PNCC were of the view that the relief sought was so significant that this matter could only be dealt with through a variation to the plan. The reasons stated were:

- the approach proposed by the submitter was fundamentally different to that set out in the Proposed District Plan
- the effects on PNCC's urban growth policies arising from a new approach would require careful study
- a variation would be necessary to allow for specific community consultation on the issue.

At the time of writing this report, the closing date for receiving further submissions had closed. Manawatu District Council had heard submissions but not or made any decisions.

5.3.3 Issues

- a) There is an expectation that the general structure and philosophy adopted in proposed plans will largely remain unchanged through the plan notification, submission and hearings process. This expectation is based on the extensive community consultation that has usually occurred prior to the plan being notified.
- b) Where submissions request fundamental change, councils are mindful of the consultation that has already been undertaken. In many cases, submissions such as these, which have merit, are often dealt with either through a plan variation or a plan change.
- c) The concern with the approach referred to in b) above, is that this imposes significant costs and time delays on the submitter, and costs on the council (and by implication, on the community).
- d) In this case study the submission and further submission process was an effective means of informing PNCC of MAF's submission.
- e) PNCC recommended that a variation be initiated, as it was important to ensure that the public had the opportunity to have an input into this process.

5.4 Case Study 4: Wellington Regional Stadium and the Wellington Railyards Site

5.4.1 Introduction

This case relates to the provision in the Wellington City Council (WCC) Proposed District Plan for a regional stadium on the Wellington Railyards site. This case is useful because it raises issues of tailoring district plan provisions to provide for a specific activity, namely a regional stadium, whilst at the same time a resource consent was being prepared and assessed for a stadium on the same site. This case study shows how the two processes were combined to produce an integrated approach to a complex issue.

5.4.2 Summary of the Case

The WCC Proposed District Plan was publicly notified on 27 July 1994. No specific provision had been made for a possible stadium on the railway yard site, or on any other site in the City.

Four submissions were received that made specific reference to a stadium within the railyards site, two of which were lodged from private individuals expressing concern over noise from a possible stadium. The other submissions were from the WCC, and the Federation of Wellington Progressive Associations requesting the inclusion of a Stadium Precinct to accommodate a new multi-purpose stadium on this site. The WCC also proposed a design guide for development and specific noise controls to apply in such a precinct. Several further submissions in support of and in opposition to these principal submissions were also lodged.

At about this time resource consent applications had also been lodged with the WCC for a stadium on a site within the railyards. The purpose of the WCC submission to the proposed district plan was to specifically provide for a stadium on the railyards so that the application would not have to be assessed as a non-complying activity. Commissioners were appointed to determine the resource consent applications (one for the stadium and one for the subdivision of the land), and to make recommendations on the submissions and further submissions lodged in respect of the district plan.

The commissioners were concerned that a number of other submissions were made on the development of other parts of the rail yard area. In particular, Tranz Rail had lodged a submission requesting the plan be changed to allow for a comprehensive development of the rail yard area. However, this could not be considered at the same time as the submission by the WCC.

Some possible remedies to provide for more integrated development of the site and the minimisation of some of the adverse effects of the stadium were not available to the commissioners as they fell outside the boundaries or extent of the resource consent and submissions received.

There were insufficient safeguards in the proposal put forward in the submissions to ensure that there would not be any significant adverse environmental effects and that it would not conflict with other provisions in the Proposed Plan.

On that basis, the commissioners rejected the stadium resource consents and the submissions to include a 'Stadium Precinct'. The Commissioners further recommended that a detailed investigation of the planning and resource management issues involved in the ultimate

development and use of the railway yards and adjacent areas be undertaken with a view to initiating a variation to the WCC Proposed District Plan. In particular, the commissioners stated that:

“We consider a variation to be the most effective means to not only achieve the development of a multi-purpose stadium on this site, but to also ensure the integrated planning and development of the entire rail yard area.”

The decision also gave specific guidance on the area that should form part of the investigation area, as well as specific issues and provisions that should be considered. A subsequent investigation and consultation exercise was undertaken and the WCC initiated a variation to the plan. A second modified resource consent application was submitted and approved. The stadium has now been completed and is operational.

5.4.3 Issues

This was an example of a successful process involving a range of complex and controversial issues. Whilst some of the issues associated with use of the rest of the railway yards are still before the courts, the provisions relating to the regional stadium site were approved.

- a) The area was considered to be of strategic importance to the city and any development on the railway yards site would impact on a number of public and private landowners.
- b) The commissioners concluded that the planning process should have been driven by WCC as it was best placed to effectively co-ordinate all necessary parties to ensure an acceptable development.
- c) The insertion of new rules and conditions via a submission on the notified proposed district plan, (as proposed by the WCC submission), must be stand alone provisions which do not impact on, and contradict any of the provisions contained in the rest of the plan. There was some discussion as to whether the proposed provisions contained in the submission would lead to confusing and contradictory assessments as to what provisions were relevant.

5.5 Case Study 5: Environment Court Decision No. W101/98 Capital Coast Health v Wellington City Council

5.5.1 Introduction

This case is different to the other case studies in that it principally relates to a council and the landowner. No third parties are included. The case focuses on whether the Wellington City Council (WCC) were correct in placing a particular zoning on a portion of land adjacent to the Wellington City Inner Town Belt within the Proposed District Plan. This case has been used as an example as it shows how councils must be able to justify their decisions in terms of the requirements of section 32 of the RMA. This case therefore gives useful guidance on how the Environment Court views such matters.

5.5.2 Summary of the Case

WCC re-zoned 4.3 hectares of land a short distance from the main hospital complex, and adjacent to the town belt in Newtown, Wellington, from 'Residential' in the Transitional District Plan to 'Open Space B' in the proposed district plan. Capital Coast Health (CCH) sought that the land be zoned 'Inner Residential Area'.

The Environment Court overturned the decision of WCC on a number of issues. Some of the issues relevant to the matters addressed in this report are:

- the Court was concerned with the fact that “No person (other than the council) sought to have this land zoned Open Space B and no person challenged the fact that CCH sought to have it retained as residential land”
- “without proper identification of how the land was held the WCC was in no position to analyse some of the threshold tests under its section 32 evaluation and consequently in no position to establish the effects of its Open Space proposal on the landowner”
- “having regard to the Open Space policies and assessment criteria in the proposed plan, a private landowner would not be able to make reasonable use of Open Space zoned land. Therefore Open Space B zoning is inappropriate for private land such as this which is perfectly capable of other uses.”
- “it is not the role of private landowners to provide for general open space and the recreational needs of the community.”

5.5.3 Adequacy of the section 32 Analysis by the Wellington City Council

The quality and adequacy of WCC's section 32 analysis was raised by the appellants, and the Court ruled that:

- additional issues raised by WCC at the hearing (relating to landscaping and the protection of heritage buildings) were not adequately within the Council's section 32 analysis
- the lack of consultation with CCH was of concern, particularly as it involved the re-zoning of land from residential to Open Space
- the difficulties for the council in assessing Open Space issues on the “micro” scale were acknowledged by the Court. “However, the imposition of such inhibiting development controls (as required by the Open Space zoning) on private land is a decision which requires particular consideration of the site specific factors involved. Therefore, we find that aspects of the council's section 32 analysis were not adequate.”

And that:

- “the appropriate method for establishing public Open Space of the site was through designation or acquisition. As this has not occurred, we therefore endorse Inner Residential zoning for the site” (ref: w101/98).

5.5.4 Issues

- a) This case raises issues about ensuring the appropriate level of consultation with parties directly affected by council decisions on plans.
- b) Highlighted is the importance of being able to meet the requirements of section 32 of the RMA. These requirements are more important where councils propose plan provisions that will significantly restrict or change the development rights previously provided for in the Transitional District. However, the practicalities of undertaking a detailed assessment of every provision or change as part of the district plan process must be weighed up against the impacts on landowners and occupiers, and time and resource constraints.
- c) This case is different from the ‘Montgomery Spur’ case where the CCC was proposing to be less restrictive. In this case, the WCC was proposing to be more restrictive but did not appear to have undertaken the necessary work to justify its restrictive zoning.
- d) This case also raises important issues concerning private property rights over public good issues and rights to compensation pursuant to section 85 of the RMA.

6 Key Issues

6.1 Introduction

This part of the report draws out the key issues that have emerged from the analysis undertaken in sections 3-5 of this report.

6.2 Administrative and Procedural Issues

Analysis of the case studies has shown that there are a number of points in the plan preparation process where councils can make administrative error. This can have significant implications for affected parties and their ability to be party to the process. However, the case studies also show that the nature and complexity of the plan preparation process is such that despite a local authorities best endeavour, there may still be parties who consider they have not been adequately informed of the plan preparation process or the submissions lodged. Inevitably, there will be others who will not be aware of, or interested in this process until development occurs.

Trying to ensure that parties are given appropriate information and opportunities to be aware of the issues raised in resource management plans is a difficult issue confronting local authorities. The case studies have highlighted some of the issues and problems that have arisen through the submission and variation processes, and that there will always be aggrieved parties who consider themselves to have been adversely affected by Council or Environment Court decisions.

6.3 The Resource Management Plan Consultation Process

The issues addressed in this report also raise important questions about the level of consultation and community awareness of the whole resource management plan process. The notification of a proposed plan should be seen as one of the important stages in a process of making an RMA plan operative. Councils may spend years researching, consulting, refining and drafting plans prior to their notification. The overall structure and philosophy of these plans is therefore derived from the community consultation and input that has occurred prior to the plan being notified. Therefore, requests for significant changes to proposed plans should be viewed in light of the consultation that has been undertaken prior to the public notification of the plan.

This issue is partly a manifestation of problems occurring before the analysis of submissions. People need to be made aware at an early stage, of the need for clear submissions in the prescribed manner and to ensure that their submissions are relevant to the RMA. An additional characteristic of the plan preparation process is that once the submission phase has been completed, new parties cannot obtain standing. This is a real problem for plans having a lengthy submission and decision-making period.

6.4 Legislative Change v Good Practice

The Town and Country Planning Act 1977 required that councils publish the actual summary of submissions in a prominent daily newspaper. This is not required under the RMA due in part to the administrative costs involved, and the concerns about whether this was an effective form of consulting with the community. Formal advertisements of the entire submission in a publication could be reverted to, however, it is unlikely that such a requirement would overcome the issues raised in the case studies because it still relies on individual landowners reading the paper and understanding the likely implications of the submission in respect to the use and development of their land. The RMA does not prevent councils from using a range of methods and forums for informing the public and this should continue to apply.

Another possible option could be to require that submissions received on plans having significant environmental effects become part of a separate public notification process where directly or potentially affected parties are individually notified. This then raises the issue of how to define 'significant submission under the RMA and how councils would be best to make decisions about who are the directly/potentially affected parties. These determinations could raise a host of other problems and issues.

Changes to the RMA in respect of consultation and process matters are therefore unlikely to resolve some of the issues raised in the case studies and elsewhere in this report. Given the wide ranging nature and effect of submissions on plans, it is more appropriate that councils have the ability to consider each submission on its merits and to apply certain key tests or principles when deciding whether to accept, accept in part, or reject submissions, or whether to initiate a plan variation or plan change.

Many of the issues raised by this report, therefore relate to issues of good practice in making decisions on RMA plans, and to ensure that councils have used their best endeavours to provide opportunities for community input.

7 Good Practice Guidelines

7.1 Introduction

It is acknowledged that to assist council's address the issues identified in this report good practice advice is necessary. This good practice guideline is intended to act as a reference to assist local authorities in their decisions on resource management plans. In cases, such as submissions on particular pieces of land, or where council has changed the zoning of a portion of land, this guideline will be more useful. However, in some cases the guidelines set out below may not be relevant to a particular decision.

7.2 Guidance on Process and Consultation Issues

After a summary of submissions has been notified and further submission received council are required to make a recommendation to its council. A planning officers report to a hearing committee regarding a submission with significant environmental effects should include a summary of the notification and submission process. The details of these matters are expanded below.

Process

- The number and nature of submissions and further submissions received.
- When and where the summary of submissions were available for public inspection.
- Whether any submitters raised issues about the adequacy of the consultation process, and how these concerns were addressed.
- Whether council made any requests for further information.
- Whether it was considered necessary to have this circulated to the other submitters.

Affected Parties

- A statement as to whether any landowners/parties directly affected by any significant submissions have made a submission or further submission.

Summary

- A summary assessment of whether there are any relevant process or consultation issues that require consideration by council.

7.3 Guidance on section 32 Issues

Local authorities are required to show that decisions made on submissions received on plans are consistent with the requirements of section 32 of the RMA. This point was borne out by the Environment Court case between Wellington City Council v Capital Coast Health. Local authorities must therefore show that:

- the regulation is needed
- other means apart from regulation are available and have been considered
- council is able to give reasons for and against the method proposed and the principal alternatives
- an assessment of the benefits and costs of the proposed option and principal alternatives have been satisfactorily undertaken
- the proposed provision or zoning etc. is needed to achieve the purpose of the RMA (necessity)
- the proposal is the most appropriate having regard to efficiency and effectiveness issues.

If councils are not satisfied that they can meet the requirements of section 32, based on the relief sought in a submission, then council can undertake the following courses of action:

- refuse the submission in whole or accept it in part
- require further information from the submitter in the form of an AEE or equivalent
- undertake the AEE or equivalent themselves and use these findings to assess the merits of the submission. The decision to use this option should be weighed against conflict of interest considerations, the councils/applicants access to the necessary information and expertise, and the cost and time implications.
- refuse the submission/s and resolve to initiate a variation
- refuse the submission/s and indicate that the applicant could initiate a plan change.

7.4 When to Use the Plan Variation or Plan Change Process

In considering whether to decline a submission in favour of preparing a variation or plan change, the following guidelines may be applied:

- a) When integrated resource management is important and could only be achieved through an additional consultation and decision-making process.
- b) Where a submission involves the use and development of a strategic community resource or requires integrated development across an area, it may be more appropriate that the local authority manages the process. This may encourage a local authority to initiate a variation where the issue is of immediate importance. Where timeframes are of less importance, councils may wish to wait until the plan has become operative and prepare a plan change. It is worth remembering that only local authorities can initiate variations. The general public and local authorities may initiate plan changes, but only once a plan has become operative.

- c) The acceptance of a submission/s would have more than minor adverse environmental effects beyond the boundaries of the site in question.
- d) The resolution of the issues associated with the submission/s go beyond the relief sought. This could include a situation where submissions have been received on a particular issue or provision. However, in order to resolve the problem council needs to change another part of the plan for which there has been no submission received.
- e) The insertion of new rules and conditions proposed in a submission/s would impact on and contradict the provisions contained in other parts of the plan.

7.5 Factors to Consider before Initiating Variations and Plan Changes

Factors that council should consider in determining the process for significant submissions:

- a) Councils should be mindful of the cost and time implications of initiating variations or rejecting a submission, and indicating that a privately initiated change at some future time would be a more appropriate course of action. This imposes costs both on the submitter/applicant as well as the council and the ratepayer.
- b) In the case of recommending a variation, a council cannot make that part of the plan affected by the variation operative until the variation and any outstanding appeals are resolved. This has implications for imposing financial contributions, as the RMA does not allow them to be imposed until that part of the plan has been made operative. Councils can seek to make parts of the plan operative by seeking a declaration from the Environment Court. In most instances, councils will wait until all appeals have been resolved and seek that the whole plan be made operative.
- c) In respect of plan changes, councils have the ability to reject a request for a plan change within two years of making the plan operative, if it is considered that the issue before them has been addressed at the time of hearing submissions on the proposed plan. This can lead to uncertainty for the developer and further costs and time delays.
- d) Limiting the plan submission and decision-making process to minor amendments rather than a significant or fundamental change, raises concerns about the ability of the private individual to make significant and positive changes to a proposed plan. This could be seen to weaken the submission and decision-making process for proposed plans. The onus should therefore be on encouraging submitters to provide the level of information required to adequately assess the potential environmental effects of their proposals as set out in their submissions. By placing the onus on the submitter to provide the relevant information, a council can be seen to retain a neutral stance and be seen to assess the proposals on its own merits. If sufficient information is not provided, a council can refuse a submission.

8 Conclusions

The range and complexity of issues raised in submissions on plans means that it is difficult to make legislative changes to the RMA that would ensure that all potentially affected parties have equal rights and abilities to influence the plan decision-making process. The onus must therefore be on councils and the political process to ensure that they operate as fair and reasonable arbiters in the process.

It is envisaged that the good practice guide included in this report will assist councils in their deliberations, so that all relevant issues pertaining to a particular issue or submission can be considered appropriately.

Where it is not possible to make the changes sought by the submitters and the submission has merit, the RMA provides mechanisms for councils and landowners to put forward proposals through separate statutory processes. In the case of councils, they can assess whether to initiate a variation or wait to initiate a plan change once that part of the plan affected by the submission has been made operative. Private landowners have the opportunity to seek plan changes subject to meeting the requirements of Clause 25(4) of the First Schedule of the RMA.

However, where submissions on proposed plans relate to specific sites or proposals, the emphasis should be on requiring the submitter to provide sufficient information to allow for a council to make an informed decision.

The good practice guide in this report should only be seen as one possible mechanism which could be used to ensure all relevant matters are considered in the assessment of submissions made on proposed plans. All of the case studies illustrate that in dealing with submissions to regional or district plans, which may have significant environmental effects, it is necessary for councils to act sensibly and to apply approaches that are appropriate to the circumstances of each case.

A more complex issue is how to more effectively inform landowners and the general public about the plan process and the implications of being parties to the plan submission and decision-making process. This matter is an issue that needs further consideration by the resource management profession.

About the Ministry for the Environment

Making a difference through environmental leadership.

The Ministry for the Environment advises the Government on policies, laws, regulations, and other means of improving environmental management in New Zealand. The significant areas of policy for which the Ministry is responsible are: management of natural resources; sustainable land management; air and water quality; management of hazardous substances, waste and contaminated sites; protection of the ozone layer; and responding to the threat of climate change. Advice is also provided on the environmental implications of other Government policies.

The Ministry monitors the state of the New Zealand environment and the operation of environmental legislation so that it can advise the Government on action necessary to protect the environment or improve environmental management.

The Ministry carries out many of the statutory functions of the Minister for the Environment under the Resource Management Act 1991. It also monitors the work of the Environmental Risk Management Authority on behalf of the Minister.

Besides the Environment Act 1986 under which it was set up, the Ministry is responsible for administering the Soil Conservation and Rivers Control Act 1941, the Resource Management Act 1991, the Ozone Layer Protection Act 1996 and the Hazardous Substances and New Organisms Act 1996.

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