

**PUBLIC  
PARTICIPATION  
AND  
CONSULTATION  
WITHIN THE RMA**

**Local Authorities Upskilling Project  
Workshop Manual No. 2**

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### *Research and Writing*

The research and writing of the "Introduction to Public Participation and Consultation" has been by Terry Baxter, MPlan graduate student in the Department of Planning, The University of Auckland. Parts of the workshop activities, and the worksheets, are based on ideas provided by Terry Baxter.

The workshop activity and case study have been researched and written by Dr Tom Fookes, Associate Professor, Department of Planning, The University of Auckland. He has also carried out the editing of the manual.

### *Material for Hypotheticals*

The case study is a further development of a hypothetical development written by Dr Fookes for the Ministry for the Environment publication "People, Policies and Plans: Planning Resource Management in New Zealand" (GP Publications 1993).

### *Additional Support*

The research and writing has been possible through the support of the Department of Planning, The University of Auckland, and GMV Associates, Consultants, Wellington.

## *Disclaimer*

The information in this manual is intended to provide an explanation of the public participation and consultation provisions of the Resource Management Act 1991 (amended) and the role of Councillors and council officers in carrying out the requirements of the Act. It must be emphasised that the Act itself is the ultimate reference and should be consulted as such. As policy advice this is not intended to be legal opinion and should not be taken as such.

**The views expressed in this manual should not be attributed to the Ministry for the Environment.**

# ***WORKSHOP ACTIVITIES***

# ***Introduction***

## ***Objective***

To increase understanding of the public participation and consultation process.

## ***Learning outcomes***

At the end of this workshop participants will:

- understand the dynamics of public participation within a democratic society
- recognise the obstacles that can prevent effective participation
- develop an understanding of the individuals and groups most likely to be affected by a planning proposal
- understand the requisites for an effective public participation strategy

## ***Who is this workshop for?***

This workshop is designed for local authorities: elected members, council officers, and their consultants. However it will be of benefit to any person who wishes to further their understanding of the complex interactions between public participation and decision-making processes.

## ***Content***

This workshop manual includes a discussion of public participation and consultation, with an introduction to practical techniques for enhancing the public participation process. The workshop will not repeat this information. Instead the workshop aims to provide a forum in which we can more clearly understand the complex dynamics of public participation. In the workshop we will examine:

- the conflicts that can arise when we attempt to balance effective government with public involvement
  - the constraints that prevent some individuals and groups from being able to participate in decision-making processes
  - the broad range of persons affected by a planning proposal
  - the methods or medium that can be used to inform or involve 'affected persons'
-

# ***Workshop Format***

## ***Introductions (10 minutes)***

- Facilitator
- Purpose of workshop
- Manual
- Major issues (nominated by workshop members)

## ***Topic 1: Participatory v Representative Democracy (20 minutes)***

- What are the differences?

## ***Topic 2: Identifying Constraints - Finding Solutions (20 minutes)***

- How do these affect the practice of participation and consultation?
  - What enhances or constrains peoples ability to participate?
  - How do we maximise the positive and avoid the negative factors?

## ***Break (15 minutes)***

## ***Topic 3: Becoming Disaffected through Poor Participation and Consultation (1hr 30 minutes)***

- What does poor participation and consultation look like in practice?
- Case Study

## ***Plenary (40 minutes)***

# ***Topic 1: Participatory v Representative Democracy***

*(20 minutes)*

**The principal questions to be explored are:**

- What are the differences between participatory and representative democracy?
- What are the pros and cons of each type of democracy?

**Facilitator's introduction** (5 minutes)

**Individual activity:** Use **Worksheet 1** to list the differences and pros and cons of participatory and representative democracy (5 minutes)

**Group activity:** Compile a group list from individual lists (record on flip chart) (10 minutes)

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## ***WORKSHEET ONE***

**In a representative democracy elected representatives provide a channel between the people and the decision-makers. In a participatory democracy the people are actively involved in the decision-making. Use this page to list some of the differences and the pros and cons of these two styles of democracy.**

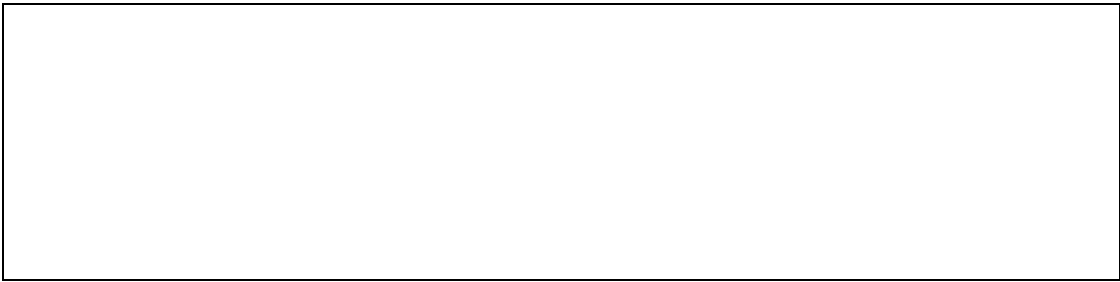
**REPRESENTATIVE**

**PARTICIPATORY**

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***Differences?***

***Pros and Cons?***



## ***Topic 2: Identifying Constraints - Finding Solutions***

*(20 minutes)*

### **The principal questions are:**

- How does the type of democracy affect the practice of participation and consultation?
- What other factors enhance or constrain peoples ability to participate?
- How do we maximise the positive and avoid the negative factors?

### **Facilitator's introduction:**

The ideas from Topic 1 will be used to identify the affect of the types of democracy on practice, and explore other factors (record ideas on flip chart)

### **Group activity:**

The group is to find ways to maximise the positive and avoid the negative factors (record ideas on flip chart; make a personal record on **Worksheet 2**)

### **Display:**

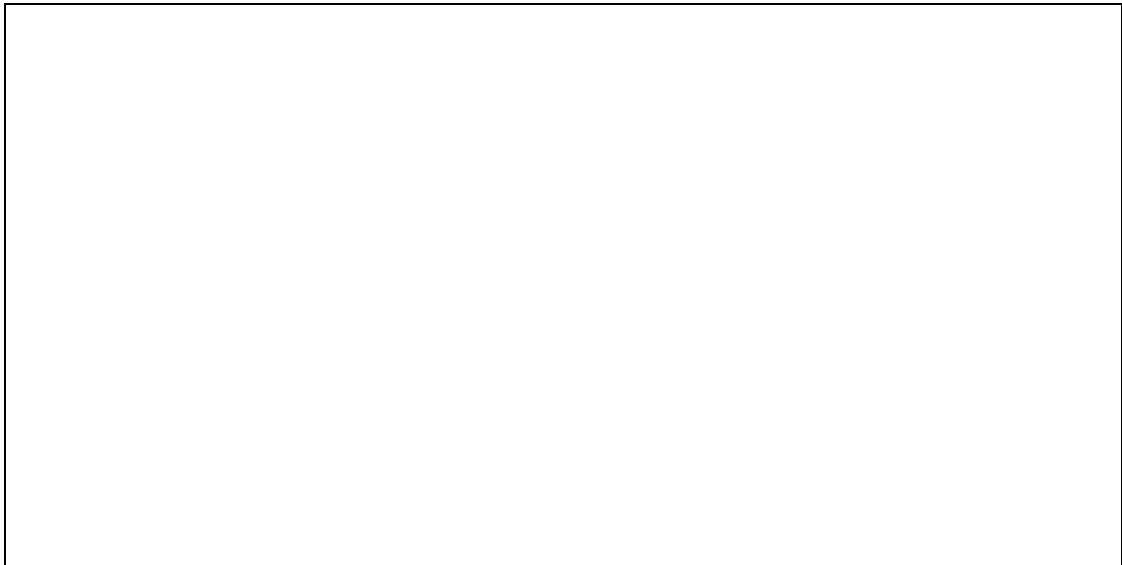
The flip chart sheets will be displayed and perused during the break to identify any unusual or innovative ideas

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## ***WORKSHEET TWO***

**There are a number of things that can constrain or enhance a persons ability to participate in planning processes. Use this sheet to identify some of them.**

<b>(+) things that enable</b>	<b>(-) things that constrain</b>



### ***Topic 3: Becoming Disaffected through Poor Participation and Consultation***

*(1hr 30 mins)*

**The principal questions are:**

- What does poor participation and consultation look like in practice?
- What is the effect of becoming disaffected through the process?

**Facilitator's introduction** (10 mins)

This topic uses a Case Study of a District Plan change for a major tourist hotel development<sup>1</sup>

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#### **Scenario for the Case Study**

The basic facts of the situation are:

- a private company wants to change the Plan
- Council is supportive and at a council meeting decides to adopt the change and proceed with the consultation required under the Resource Management Act 1991 (First Schedule)
- a minority councillor initiates a motion that officers provide an outline of principles which council could follow to ensure there is effective public participation on the change
- meanwhile the Mayor and the Planning Committee chairperson develop a fast track approach which has the minimum of public participation

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<sup>1</sup> The same case study developed for the 7th form Geography teaching unit in *People, Policies and Plans: Planning Resource Management in New Zealand* (MfE 1993), and prepared by Dr T.W. Fookes, has been used here.

The plan change is necessary because of the scale of the land use proposed resulting in a significant non-compliance with the objectives, policies and rules of the operative Plan. The tourism proposal, *Hinengaro Haven*, is for a complex consisting of a 150 room hotel, 200 cabin and housing units for guests and staff. A golf course will be part of the development. It also includes development of the waterfront with a new jetty, a first class waterfront seafood restaurant, craft shops, an entertainment centre, and the latest in modern recreation amenities. The proposal conflicts with several objectives in the operative plan:

- "To maintain and enhance public access to and along the coastal marine area, lakes and rivers."
- "To maintain the quality of the sea water in Hinengaro Bay so that it remains suitable for recreational activities such as bathing and fishing."
- "To preserve the natural character of the coastal environment, wetlands, and lakes and rivers and their margins, and to protect them from inappropriate subdivision, use and development."
- "To protect and maintain access to food gathering sources at Kainui Creek and Kaimoana Point for the tangata whenua."
- "To protect and maintain access to pingao and haraheke growing sites east of Kainui Creek for the tangata whenua."

The Hinengaro Bay District Council has accepted the basis of a Plan Change proposal from the developer's consultants. This is a "Tourist Resort Special Development Area" with the following objectives:

- "To have buildings designed and located to blend into the natural landscape."
- "To promote the regenerating native vegetation, and the enhancement of the regeneration process."
- "To have a form of overall development which is sensitive to the coastal environment."

The Performance Standards relating to these objectives are as follows:

- "Buildings are not to exceed two stories."
- "The foredune is to remain intact except in the immediate vicinity of the jetty, where disturbed dunes are to be replaced and stabilised."
- "Buildings are to be designed and located so as to blend in with the natural environment."
- "Existing pockets of regenerating native bush are to be preserved and their growth encouraged."

Where a proposal meets these standards the development will be considered a Permitted Activity. Features of the development which are subject to the jurisdiction of the Rockville Regional Council (eg waste water discharges) will require resource consents from that consent authority. Where the development is non-complying, and a resource consent is required from the District Council, there will be a joint hearing through the Regional Council.

### **Council officers' public participation and consultation report**

The essence of the report to Council is:

- the Hinengaro Haven public participation and consultation:
  - (a) should satisfy the criteria in the case *Wellington International Airport Ltd v Air New Zealand* (1991) [see p.23 in this manual], and
  - (b) comply with the procedure in the First Schedule, RMA, covering: who is to be consulted (cl. 3); public notice and access to documentation (cl.5); making submissions (cl.6); public notification of submissions (cl.7); further submissions (cl.8); and a hearing by the council (cl.8B).
- the statutory provisions in the First Schedule, RMA, are best considered a minimum but mandatory process, and it is possible for council to go beyond that if it so wishes. Current 'good practice' guidelines would suggest the following procedure within the statutory process:
  - (a) council to appoint an independent person to convene a community consultative group, with a membership covering the persons identified in clause 3 of the First Schedule, RMA, and representatives of local community organisations known to maintain a brief of watching council's actions on the environment. Council would also have representation by councillors on the group. Council officers would support the group.
  - (b) the consultative group would be given the brief:

*"(1) to take the information provided by the resort developer, the advice to council, and the council's decisions on the content of the "Tourist Resort Special Development Area"; (2) to identify, through a scoping process, the desirable environmental outcomes for such a development area; suitable objectives for the area with related policies and methods to achieve them (consistent with s 32, RMA), including performance standards and rules for the district plan; (3) to inform and consult with the public during the process (as appropriate), including permitting representatives on the group to seek advice from their constituent bodies; (4) to report back to council with recommendations for the content of the Plan Change."*
- The consultative group should be given adequate time, without unreasonably delaying the intending resort developer's plans. The context for deciding the time period should be the expected delays from community opposition should an effective participation and consultative process not be followed. The developer has already advised council that other projects have taken a minimum of 2 years to be finalised, including appeals to the Planning Tribunal. If council provides effective support to the consultative group, especially environmental data, it would be reasonable to allow 9-12 months for the task, with the convenor advised that the time required should be kept as short as possible without compromising the benefits of the consultative process.
- A budget should be provided, based on an estimate of the cost to council if it does not achieve adequate consultation and the project goes to appeal and on to the High Court (likely given the sensitive iwi/Treaty of Waitangi issues).

- Council should provide extensive public notice of the establishment of the consultative group, including separate and appropriate notice to the tangata whenua who will be represented according to clause 3(1)(d), First Schedule, RMA.

### **Actions taken by the Mayor and the Chair of the Planning Committee**

Having been advised by the Council's solicitor on the minimum consultation requirements in the Resource Management Act 1991, the Mayor and the committee Chairperson resolve to take steps to ensure that the Plan Change is notified and adopted by Council within 2-3 months. That would mean a resort could be under construction before the next local body elections due in 9 months. The Manager in charge of district plan matters is instructed through the CEO to prepare a work plan to meet that timetable, notwithstanding the officers' report on consultation. The Agenda for the next Planning Committee meeting includes both the officers' report requested by the previous Council Meeting, and a report from the CEO setting out the minimum requirements for consultation with a recommendation that the proposed Plan Change as attached be notified in a week's time with the closing date for submissions in 20 working days (cl.3(b) First Schedule).

The CEO's report also advised that both he and the Mayor had met with both the local Ministry for the Environment and Department of Conservation managers, the chairperson of the Regional Council, the chairperson of the local iwi, and the convenor of the Heritage Trust Inc. All these persons had been given information on the proposal and the intended Plan Change and advised that they needed to make any comments within two weeks. The Council's solicitor had advised that this met the requirement in clause 3, First Schedule to consult during the preparation of the Plan Change. It was noted that all the persons contacted had objected to the minimal approach being taken while acknowledging that how the Council met the requirements was at its discretion.

A majority of the Planning Committee's membership came from the Citizens' Party for Private Enterprise and the recommendation was accepted. The committee Minutes recorded also that one councillor in opposition warned, "That the minimal approach being taken would only guarantee that the two Ministers, the Regional Council, the iwi and a range of local environmental groups would ensure that the issue went to the Planning Tribunal." It was rumoured, subsequently, that the Mayor had said that he had personal contacts with the Ministers and the Regional Council chair, and he had been assured that he need not worry about any delaying tactics from their officers. The others would be scared off by the fear of the Tribunal hitting them with costs.

### **Group activity:**

#### First step (30 mins)

This activity compares the "ideal" good practice model with the political pragmatics of the actions of the Mayor. The questions it addresses are:

- how does the ideal differ from the pragmatic approach?

- does it matter? (ie what are the possible intended and unintended consequences arising from the actions taken?)
- who are the likely persons in the community who would feel disaffected by the process being followed?

Use Worksheet 3 to list (a) the likely intended and unintended consequences identified by your group; and  
(b) the likely persons or groups who would feel they have been shut out of the process, and their issues and preferred responses not taken into account.

## ***WORKSHEET THREE***

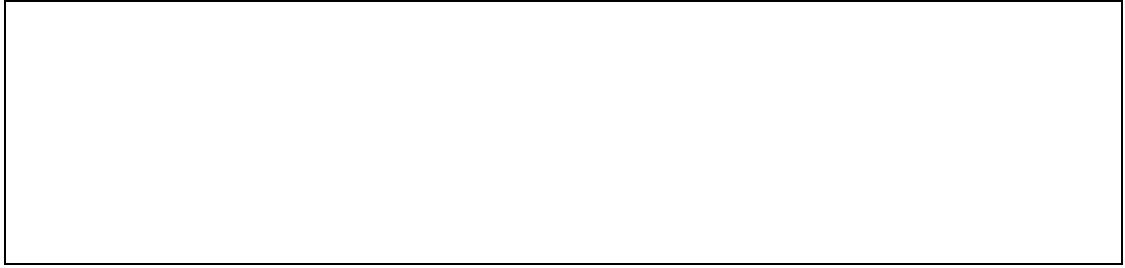
**Use this worksheet:**

**(a) to identify the likely intended and unintended adverse consequences**

**(b) to identify the persons or groups likely to be affected by the proposal outlined in the case study.**

**(a) the likely intended and unintended adverse consequences of the development proposal - are they minor or major?**

**(b) the persons or groups likely to be affected by the proposal outlined in the case study - use generic names (e.g. bird-lovers, tangata whenua, etc)**



Second step (60 mins)

This is a role play. You are to step outside any usual council role. You are to be people affected by, or with an interest in the proposal. The purpose of this role play is to demonstrate how people who are left out of the process, or who think the consultation is inadequate etc, become increasingly disaffected. To help you do this, role specifications will be handed out which relate to likely adverse effects etc.

***Plenary***

(40 mins)

**Debrief**

The objective here is to develop a checklist of what is good participation practice - the things councils need to make sure they cover so that they address the concerns of other parties.

# ***INTRODUCTION TO PUBLIC PARTICIPATION AND CONSULTATION: A REFERENCE MANUAL<sup>2</sup>***

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<sup>2</sup> The initial research and writing for this part of the manual was by Terry Baxter, with the final compilation and editing by Assoc. Prof. T. Fookes. The views expressed are not to be attributed to the Ministry for the Environment.

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# 1. Introduction

The *Resource Management Act 1991* contains opportunities for groups and individuals to participate in decision-making processes, particularly in policy and plan-making and resource consents. The tangata whenua has participation and consultation provisions in recognition of its status as a Treaty of Waitangi partner.

Through the provisions for participation and consultation the Act acknowledges the interdependency of the public and local authorities in planning and decision-making. It assumes a mutual trust and reliance upon one another to achieve the Purpose and Principles of the Act (Part II, RMA). Central to Part II is the goal of promoting the sustainable management of natural and physical resources.

When compared with the statutes it replaced the Act has increased the potential for citizen contact with the planning process. However, the merits or otherwise of these changes are still being raised from time to time. The practices adopted sometimes suggest a begrudging compliance by councils.

Support for public participation and consultation is based on several outcomes, including the way it:

- is a check against any misuse of power
- communicates citizens' attitudes to the planners and decision-makers
- instils a sense of self-determination
- taps into sources of knowledge which may not have been accessed

On the other hand, the argument against public participation and consultation is based on a believe that:

- the experts are better qualified to judge what is in the public interest
- the public is usually too apathetic to become involved
- the time and costs involved far outweigh any benefits
- it can lead to non-action and is not an effective means of social change

The *Local Government Act 1974* (as amended) also provides for public participation and consultation, with its Special Consultative Procedures. These apply especially to Annual Plans. In a recent study, one quarter of local authorities indicated they had received complaints about their consultation on draft annual plans. Seventy percent of local authorities surveyed had no policy on public consultation for annual planning over and above legislative requirement (Department of Internal Affairs 1995).

There are significant differences throughout New Zealand in the form and content of consultation processes used by local authorities. While some people suggest that this reflects a plurality of values and local cultural differences, it may also be the case that some local authorities are not really doing as much as their counterparts to maximise their consultation procedures.

In this manual we will be focusing on:

- basic issues

- legal considerations
- mechanisms for encouraging public participation and consultation

Included in the manual is discussion of the following questions:

- What exactly do we mean by 'democracy' and 'public participation'?
- What are the obstacles or constraints preventing good dialogue developing between local authorities and their communities?
- What are the implications for people working in local authorities and what can they do to ensure the process of involving the public is effective and mutually beneficial?

## ***2. The Issues***

### ***Democracy and Public Participation***

#### ***What is public participation?***

Public participation is seen to be a fundamental value in democratic societies and central to a working democracy. Inherent in a democratic planning philosophy is the ability of individuals to influence their environment. In most democratic societies it is generally assumed that the individual has the right to be informed and consulted and to express views on matters which affect the individual personally.

There are two main schools of thought about how the public should participate in democratic processes:

- Participatory democracy advocates a high degree of involvement by an active and informed citizenry. It is concerned with enabling or creating opportunities for the public to participate in creating and managing the environments in which they live.
- Representative democracy emphasises a more limited role for citizens. Citizens participate by choosing their leaders in elections who then provide a channel between the governors and the governed.

The political setting for New Zealand is formally a representative democracy, but some parts of society attempt to bring in features of participatory democracy. For example, the relationship of former MP Michael Laws with his electorate has been a participatory one, with his questionnaires on issues, and a willingness to vote in accordance with the majority view.

#### ***Why is public participation a worthwhile process?***

There are two principal reasons:

- ethical - in a democratic society those whose environments and communities are at stake should be involved in making the decisions that concern their lives
- pragmatic - the public are more likely to support a proposal or plan in which they have had some involvement. Conflict does not necessarily disappear but it does get acknowledged and possible solutions put in place

There are accountability benefits:

- gives reassurance of an open planning process
- establishes responsibility and responsiveness
- keeps local authorities honest

There are decision-making benefits:

- enables better informed decision-making

- helps make authorities more thoughtful of broader issues if they are fixed on thinking about single purpose functions
- people have local knowledge and practical experiences which otherwise might not be taken into account
- citizens more likely to contribute and support activities that they've had a part in defining or creating
- leads to better informed community - over time build up knowledge and skills in the community so that their contributions become even more valuable
- encourages public debate leading to diversity of solutions
- improves sensitivity to the needs of others

There are individual and community benefits:

- reassures people they are being considered
- increases household awareness of sustainable development issues
- helps empower individuals over their immediate environments
- helps encourage interactive communities
- provides greater political equality for the underprivileged
- provides effective counterweight to the power of politicians

Such a long list of benefits leads some people to ask, "Is the process more important than the product?" In other words, even if the initial outcome has not changed, are there sufficient other likely benefits for the process to have been worthwhile? In the context of a representative democracy this may reconcile people to the limited affect their contribution may have had on the initial proposal. For someone expecting to have a greater impact on the proposal, as may occur in a participatory democracy, this may simply reduce the credibility of the process for them.

### ***What is consultation?***

Consultation is one method of public participation. It is about sufficient time to consult; the sharing and increasing understanding of information; and the likelihood of a change in the proposal. It involves dialogue and feedback and listening is just as important as talking. Meaningful consultation helps people to understand each others point of view and what is happening. It develops trust and partnership between people and allows them to contribute to tasks as equals. It increases the power and influence of both parties in a relationship. The courts in New Zealand have developed a definition of consultation [*Wellington International Airport Ltd v Air New Zealand* (1991) NZLR 671]. This is discussed below under 'Legal Considerations'.

### ***What is partnership?***<sup>3</sup>

In New Zealand's bi-cultural setting the Treaty of Waitangi raises questions on the relationship between partnership and participation. The Treaty provides for a partnership between Maori (tangata whenua) and the Crown. The Treaty is recognised in the

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<sup>3</sup> Further references are: MfE 1991: *Consultation with Tangata Whenua*; Parliamentary Commissioner for the Environment 1992: *Proposed Guidelines for Local Authority Consultation With Tangata Whenua*; Ministry for the Environment 1995: Case Law on Consultation, *Working Paper 3*, MfE Wellington; Ministry for the Environment 1993: *Taking Into Account the Principles of the Treaty of Waitangi*, MfE Wellington.

Resource Management Act (RMA) (s 8) through reference to its principles, while the duty to consult with tangata whenua, elsewhere in the Act, is expressly provided for as a part fulfilment of the Crown's Treaty obligations. In this context a partnership implies shared power and decision-making. Inherent in this partnership is the notion of reciprocity - the exchange of the right to govern (kawanatanga) for the right of Maori to retain their full tribal authority and control over their lands and taonga ( te tino rangatiratanga). Local government, as a creature of central government, carries the same responsibilities towards the Treaty (K. Palmer 1993, 64).

***Does public participation lead to social justice?***

Over the past approximately 25 years social justice or social equity has emerged as a significant issue for local authority consideration. While equity is about attempting to devise policies in favour of the least powerful, within this social framework is a wide range of attitudes to citizen power. A basic question is the extent that participatory process should seek to accord more power to the public or the community? Public participation involves an exchange of power between those who have knowledge, control and resources and those who do not. The extent to which power is shared and redistributed is entirely dependant on the actions and intentions of those who possess it. Within local government this power is in the hands of both elected members and the officers.

In her essay on public participation Shelley Arnstein (1969) claimed that citizen involvement in planning represents a redistribution of power from the managers to the public. She developed a 'ladder of citizen participation' (Figure 1). Within the ladder she describes the eight steps of involvement and power sharing that are typically found in planning. These range from non-participation, to tokenism to full sharing of power. In the real world the number of rungs will be considerably more than eight, and the order of the rungs may change.

<b>Rungs on the ladder of citizen participation</b>	<b>Nature of involvement</b>	<b>Degree of Power sharing</b>
1. Manipulation	Rubberstamp committees	Non-participation
2. Therapy	Powerholders educate or cure citizens	
3. Informing	Citizens' rights and options are identified	Degrees of Tokenism
4. Consultation	Citizens are heard but not necessarily heeded	
5. Placation	Advice is received from citizens but not acted upon	
6. Partnership	Trade-offs are negotiated	Degrees of citizen power
7. Delegated Power	Citizens are given management power for selected or all parts of programmes	
8. Citizen Control		

**Fig. 1 Arnstein's Eight Rungs on the Ladder of Citizen Participation**

## Quotable Quotes from Arnstein (1969)

*Inviting citizens' opinions, like informing them, can be a legitimate step towards their full participation. But if consulting them is not combined with other modes of participation, this rung is still a sham since it offers no assurance that citizen concerns and ideas will be taken into account. The most frequent methods used for consulting people are attitude surveys, neighbourhood meetings, and public meetings. When power holders restrict the input of citizens ideas solely to this level, participation remains just a window dressing ritual. People are primarily perceived as statistical abstractions, and participation is measured by how many come to meetings, take brochures home or answer a questionnaire. What citizens achieve in all this activity is that they have 'participated in participation'. And what power holders achieve is the evidence that they have gone through the required motion of involving 'those people...'*

*Public participation is concerned with the redistribution of power that enables the have not citizens, presently excluded from the political and economic processes, to be deliberately included in the future. It is the strategy by which the have-nots join in determining how information is shared, goals and policies are set, tax resources are allocated, programmes are operated, and benefits like contracts and patronage are parcelled out. In short it is the means by which they can induce significant social reform which enable them to share in the benefits of an affluent society.*

\* \* \*

### ***What are some of the problems that can arise out of public participation exercises?***

Through a number of studies it is possible to identify the following problems:

#### Representation issues

- authority and accountability - whom do the participants represent?
- can lead to a non-planning and semi-anarchic state
- may only represent a minority of the population - those who are active and committed participants
- how do we ensure that new procedures will be any more democratic than existing ones?

#### Interpretation issues

- lack of clarity of objectives and therefore difficult to evaluate
- difficult to measure success of participation; to establish criteria for success

#### Information issues

- if information is a precondition for successful participation, can the public be informed without information being controlled by the authority who conveys it?

- what happens when greater openness about planning proposals multiplies objections and effectively prevents any decisions from being taken?

#### Process issues

- what forms of community organisation best represent the underprivileged?
- by giving priority to public participation do we have to sacrifice other principles?
- if market place advocacy is intervening in political processes, how do we guard against this?
- may not be an effective means of radical social change

From these problems it may be concluded that participation is not a substitute for planning or for government.

### ***3. Legal Considerations of Public Participation***

In this section we look at the key mechanisms within the law that concern public participation in resource management processes. We consider aspects of the Resource Management Act 1991 (amended) that might limit and constrain public involvement. Finally, we examine the courts interpretation of the legal meaning of 'consultation'.

#### ***What are the legal requirements for public participation under the RMA?***

Part II: Purpose and Principles of the Act: Local authorities are bound to comply with Part II. This is expressly so in the preparation of policies and plans and in the consideration of applications for resource consents. Sections 5, 6 and 7 implicitly involve consultation in that:

- s 5(2) includes allowing for people and communities to be able to provide for their social, economic and cultural well-being.
- s 6(e) requires that provision be made for the relationship between Maori and their taonga.
- s 7(a) requires that particular regard be had to kaitiakitanga.

Section 8 requires those performing functions under the Act to take into account the principles of the Treaty of Waitangi. This is an explicit provision for participation and consultation through the partnership principle confirmed by Cooke J. in the Court of Appeal. Consultation with tangata whenua is one of the Crown's partnership responsibilities. Consequently the statutory obligation to consult falls on the consent authority and not on the applicant for a resource consent.

The Parliamentary Commissioner for the Environment has published a very useful guide on consulting with tangata whenua, with the title *Proposed Guidelines for Local Authority Consultation with Tangata Whenua*.

National Environmental Standards: National Environmental Standards may not be established without giving the public adequate time and opportunity for comment (s 44).

National Policy Statements: a Board of Enquiry is appointed by the Minister for the Environment to assess a proposed National Policy Statement, and any person may make a submission on this Statement (s 49).

New Zealand Coastal Policy Statement: the same submission processes apply as for National Policy Statements (s 57).

Regional and district policies and plans: Although providing a strong effects-based emphasis in resource management, the RMA does not specify how effects-based plans should be constructed.

- The contents of policy statements and plans are specified, but it is also possible for local government to develop visions and goals within those frameworks. Consultation is a requirement for the preparation, changing and reviewing of

these policies and plans. The people and organisations to be consulted are listed in Clause 3(1)(d) of the First Schedule of the RMA.

- The Act requires local authorities to consider alternatives and assess benefits and costs when drawing up objectives, policies and rules (s 32). The process of meeting the requirements of s 32 reveals the need for consultation with the people and organisations listed in the First Schedule.
- Iwi planning documents are to be considered by local authorities in the preparation of policies and plans (ss 61, 66 and 74).
- Any person may make a submission on a regional policy statement and a plan (regional and district) once it is notified. Any person can request a change to a plan at any time (but not a regional policy statement). The directive to publicly notify policy statement and plans indicates the intention of the legislators - the process of preparing, reviewing or changing plans must involve some kind of dialogue with communities. While reviews may be undertaken at any time by local authorities, plans are required to be reviewed every ten years.

The resource consent process: The RMA removed the limited standing requirements of the Town and Country Planning Act. It also considerably broadened the potential opportunity for public participation in the resource consent process.

- Section 88 requires that an assessment of effects of the activity on the environment be prepared by the applicant for a resource consent in accordance with the Fourth Schedule. Clause 1(h) of this schedule requires the applicant to identify the persons affected by the proposal and the consultation undertaken. Tribunal decisions have made it clear that those who do not provide for adequate consultation will not succeed in the face of appeals.
- Notification Section 93 requiring the notification of resource consents is a key mechanism in the RMA for inviting public involvement. Tribunal decisions have shown that accuracy is paramount.
- Non-notification Section 94 requires that consents need not be notified if the adverse effect on the environment is minor and written approval has been obtained from every person who may be affected by the granting of the consent. This section may offer applicants an incentive to satisfy concerns held by persons who may be affected. It provides for the interests of both applicants and affected persons to be met to their mutual satisfaction. This means the significant costs (in both time and money) incurred by all participants in the resource consent process can be avoided or minimised at the outset. Affected persons retain the choice to grant or withhold their written approval. It is the responsibility of the consent authority to be satisfied that the written approval has been obtained from every person who may be adversely affected. Applications are to be notified if affected persons written approvals are not obtained.
- Submissions In contrast to previous legislation that limited the persons who could make submissions on a resource consent Section 96 allows any person to

make a submission on a notified resource consent and to be heard at a local authority hearing.

- **Hearings** The RMA reform process intended to make hearings relatively user friendly. Section 39 directs the hearing authority to avoid unnecessary formality, recognise tikanga Maori and not to allow cross examining or questions from the floor.
- **Right of Appeal** Under Section 120 anyone who has made a submission on a resource consent may appeal the decision made by the hearing authority to the Planning Tribunal. Under Section 274 any person having an interest in proceedings 'greater than the public generally' may also appear. Section 269 gives the Planning Tribunal considerable discretion to 'regulate its proceedings in such a manner as it sees fit'. In particular, the 'proceedings may be conducted without procedural formality where this is consistent with fairness and efficiency'.
- Under Section 299 any party to any proceedings before the Planning Tribunal may appeal to the High Court against the decision of the Tribunal, although only on a question of law.

**Water Conservation Orders:** Section 204 requires that extensive public notice be given regarding all applications for water conservation orders.

**Designations and Heritage Orders:** Sections 169 and 189 follow the same procedures of notification as a standard resource consent application.

**Enforcement:** Under Section 316 any member of the public may apply to the Planning Tribunal for an enforcement order.

### ***How have the courts defined consultation?***

Although the RMA requires an active duty to consult with various persons it does not clearly describe how this process is to take place. Therefore it has fallen upon the Planning Tribunal and the High Court to provide guidance and direction as to the meaning and limits of consultation under the Act. The following are summaries of key cases which define the consultation process required under the RMA.

*Wellington International Airport Ltd v Air New Zealand* (1991) NZLR 671

In this case the Court of Appeal found these fundamental elements of consultation:

- the statement of a proposal not yet decided upon
- listening to what others have to say and considering responses
- sufficient time must be allowed and a genuine effort must be made
- people who are being consulted with must be given enough information so as to be able to make intelligent and useful responses
- the consulting party must keep its mind open and be prepared to change or even start afresh although it is entitled to have a working plan already in mind
- the party obliged to consult must hold meetings, provide relevant information and further information on request, and wait until those being consulted have had a say before making a decision

Consultation is not:

- merely telling or presenting
- intended to be a charade
- the same as negotiation although a result could be an agreement to negotiate

*Ngati Kahu and Pacific International Investments Ltd v Tauranga District Council*  
A72/94

- consultation needs to be conducted in mutual good faith and to a degree sufficient so that a council has familiarised itself as to the nature and substance of the interests and concerns of tangata whenua
- consultation does not mean consensus. A council must consult for a reasonable time in a spirit of goodwill and open-mindedness, so that all reasonable planning options are carefully considered and explored. If the outcome is disagreement, then this has to be accepted.
- consultation should be ongoing. A council should re-open consultation if other factors and information are brought to its notice and necessitate review of the understanding previously reached.
- consultation should not fetter the council's decision-making responsibility. A council must be free to determine submission or cross-submission made to it on a policy statement or plan, without being fettered in its decision-making responsibility by an understanding reached prior to the notification of the policy statement or plan

*Gill v Rotorua District Council* (1993) 2 NZRMA 604

- the Planning Tribunal established that one of the most nationally important requirements of the Act under Part II considerations is that account be taken of the Principles of Waitangi and that consultation is one of those principles

*Haddon v Auckland Regional Council* (1994) NZRMA 49

- the Planning Tribunal defined the duty to 'take into account' under s8 as "weighing the matter with the other matters being considered and, in making a decision, effect a balance between the matter at issue and be able to show he or she has done so."
- the parties must consult at the initial stages in the process.

*Quarantine Waste (NZ) Ltd v Waste Resources Ltd* (1994) NZRMA 529 (HC)

- the statutory obligation to consult falls on the consent authority and not on the applicant for a resource consent.

*Worldwide Leisure Limited v Symphony Group Limited and Taupo District Council*  
(1994) M1128/94 (HC)

- consultation needs to be conducted in mutual good faith and to a degree sufficient so that a council has familiarised itself as to the nature and substance of the interests and concerns of tangata whenua.

- consultation does not mean consensus.
- consultation should be on-going
- consultation should not fetter the Council's decision making

*Ngatiwai Trust Board v Whangarei District Council* (1994) NZRMA 269

- a consent authority is not necessarily obliged to consult with the tangata whenua on all resource consent applications but in some specific cases they may be under a duty to do so

*Rural Management Limited v Banks Peninsula District Council* (1994) NZRMA 412  
and also in *Greensill v Waikato Regional Council* (1995) W 17/95

- consultation is a two-way process

*Whakarewarewa Village Charitable Trust v Rotorua District Council* (1994) W 61/94

- the duty to consult can be met by council officers acting in a non-judicial capacity. Consultation should not be undertaken by the council acting in its quasi-judicial capacity

*Tawa and Ngatai v Bay of Plenty RC* A18/95

- adequate consultation is met by making a genuine effort to consult to the extent the consulting person or body could not have been expected to take matters further

*Paul v Whakatane DC* A12/95

- the amount of consultation should be proportionate to the extent and likely effects of the proposal in question

*Hanton v Auckland City Council* (1994) A10/94

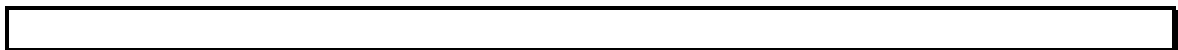
- the Tribunal directed that the parties must consult at the initial stages of the process

*Aqua King Limited v Marlborough District Council* (1995) W 19/95

- consultation requires more than sending out notice and seeking comment. It requires a response by the applicant to those consulted

*Banks v Waikato Regional Council* (1995) A 31/95

- although consent authorities are required to take into account the principles of the Treaty of Waitangi it does not invest them with authority to decide whether the Crown is in breach of its Treaty obligations or what redress might be appropriate.



## *Consultation under the RMA*

### **Ten Keywords**

Early

Listening

Informing

Ongoing

Waiting

Balancing

Feedback

Mutual good faith

Two way

Open Minded

### ***What are the limitations and constraints on public participation under the RMA regime?***

Often local government finds they make genuine attempts to encourage consultation and find that people do not always become fully involved. Politicians and planners sometimes put this lack of involvement down to 'public apathy'. While disinterest in the issue may be an explanation for apathy, unless constraints on public participation are minimised, the potential to achieve wide public interest and the best environmental outcomes will be reduced. Persistent expressions of apathy should send politicians and planners revisiting the way they have carried out the public participation and consultation.

There are many issues that may hinder or prevent the public from becoming fully involved in decision-making processes. By identifying the obstacles we will hopefully be in a better position to mitigate or remedy them. A number of these obstacles are discussed here.

### **Limited public understanding**

The general public appear to have a limited understanding of the Resource Management Act and how it is enacted via the hierarchies of national, regional and local government.

Many are unaware that opportunities for managing their environments can be achieved by intervening in the resource management processes. It is easy for planners and councillors working with the Act to assume that people know more than they do. Legislation is generally remote and difficult for the untrained to read and interpret. The RMA is especially so because of its subject matter, length and complexity.

Public educational programmes on their roles under the RMA have not been extensive. Although some consideration is being given to the Act within school curricula, little is being done to provide adult education for members of the general public.

Although consent authorities sometimes provide members of the public with basic procedural information this is not always the case. Individuals frequently have to seek professional advice or obtain access to basic information on rights and procedures.

### Notification procedures

Although all persons now have the right to make submissions on resource consents, only those aware of particular applications are able to make the choice to do so. Section 93 of the RMA sets out requirements for notification of applications. It directs consent authorities to serve notice of applications on such persons who are, in its opinion, likely to be directly affected by the application, including adjacent owners and occupiers of land. This has sparked considerable debate as to who can or cannot come under the umbrella of the 'directly affected'. A conservative estimate of who is affected can severely constrain the public participation process.

The manner of public notification has significant implications for public participation. Although complying with the Act:

- notification should not require a sustained, pro-active vigilance to keep tabs on what is happening
- notices in the daily newspaper should not be obscured amongst a mass of other information
- notices could be written in a style that is easier for a layperson to understand. They should describe the effects of the activity or illustrate the proposal in a comprehensible manner
- notices only need to be inserted in the main daily newspaper, and a notice posted at the site where the activity is to take place. Additional means to advise the public could be adopted (eg in a local community newsletter or at the supermarket)

### Non-notification

Section 94 allows consent authorities to not notify applications where the written approval has been obtained from every person whom the consent authority considers may be adversely affected by the granting of consent. Further, a consent authority shall not use the fact that a person may be adversely affected as relevant grounds for refusing to grant consent where that person has given their written approval. However, there are no mechanisms in place to ensure that an affected persons are fully informed of all the actual and potential effects of the activity. Neither does the RMA take into account that property ownership and residency are transient states and that therefore many more people will be affected by the activity than the person who gives consent.

The following table identifies some of the ways that non-notification procedures can constrain public involvement:

***Non-notification***  
***How can it constrain public participation?***

- could severely inhibit the application of the philosophies of the Act to a particular land use development
- has implications for the ability of the Act to guarantee public accountability and citizen involvement in the planning process. There currently exists little control over the widespread effects of the incremental changes brought about by the non-notification of resource consents.
- effectively precludes the opportunity for submissions from public interest groups or individuals not directly affected and therefore not consulted.
- creates the potential social problem of powerful economic interests purchasing the democratic rights of citizens
- creates a 'compensation market' (where the 'sellers' are the potentially affected party, the 'buyers' are applicants and the 'commodity' is the written approval) which may have socially regressive effects, and may therefore be socially unjust.
- effects on occupiers may not be considered or had regard to where the written approval of owners has been obtained by payment
- developers may prey on economically deprived areas which may be more vulnerable to market compensation for environmental detriment
- affected persons effectively surrender their right of further comment on a proposal and may not be fully aware of the consequences of providing their written approval
- the compensation market does not compensate for long-term impacts and may result in inter-generational inequity

Formality of Procedures

The local authority hearing procedure before a resource management committee can be a daunting procedure for the uninitiated, particularly for those not accustomed to public speaking. Where the hearing is held around a table at which all the key players take a seat, a lone submitter may feel threatened joining the group, particularly if the applicant is accompanied by an entourage of lawyer, planner, architect and other 'experts'. Formal cross-examination is not allowed at a council hearing, although questions may be asked through the chairperson.

Appeals to the Planning Tribunal take place with even more formality (although s 269 gives the Tribunal discretion to regulate its own proceedings). The Planning Tribunal is conducted in a court-like style and witnesses take an oath and may be cross examined.

Technical Complexity

Resource consent applications often include detailed scientific and technical information which may not be readily understood by many members of the public. It may require interpretation by experts in various fields such as engineers, geologists, planners and architects.

Financial Considerations

The direct financial costs of participating in the resource consent process are potentially high. This is particularly so if the process continues to the Planning Tribunal or beyond. Costs may include:

- legal counsel costs
- planning and other expert witnesses' costs

The complexity of the Act and its relative newness increase the need to obtain legal advice. It is difficult for persons unqualified in the law to prepare a legal argument. For this a lawyer is needed and this can be a very costly process. As well as legal advice it is often necessary to obtain expert planning and other advice, particularly to make sense of planning and policy documents.

Another source of professional expertise which is often needed is that of scientific and technical experts. Their assistance may be needed at an early stage to make sense of technicalities in an application. They may also be needed to appear as expert witnesses at resource consent hearings. The costs of obtaining an expert witness are highly variable, but it is a further cost which may be incurred by any member of the public participating in the resource consent process.

The potential for liability for costs, especially if the involvement is unsuccessful, is a clear deterrent to public participation. This is not significant at the level of local authority hearings where costs are limited to administrative charges. However, at the level of Planning Tribunal, under s 285 the Tribunal is given discretion to award costs against any person appearing. There is no general practice in the Planning Tribunal, as there is in the High Court, to award costs to a successful party. However, in many cases the Tribunal has required unsuccessful parties to contribute towards costs. The Tribunal has taken this position even when voluntary groups and appellants in weak financial positions are involved. Concern over such costs may be a significant deterrent to environmental and other community groups and individuals to appeal resource consents.

#### Non-notification of submissions

Prior to 1993 local authorities were required to summarise the nature of the submissions received on the proposed policies and plans. The 1993 amendment removed this requirement and now only obliges the authority to give notice of the opportunity to inspect the summary of submissions. It now falls to members of the public to inform themselves of the nature of submissions and whether or not they adversely affect the environment.

#### Opportunity costs

People have many demands on their time. To become involved in the public planning process they must give up their time and other activities. Opportunity costs refer to losses involved in giving up these other activities. These may be calculated in dollar terms (for example wages lost or cost of childcare) or in more qualitative ways (for example loss of time spent in leisure activities or with family). Consideration of such choices are likely to discourage many members of the public from participating in what is often a time consuming process. There is no provision for such costs to be reimbursed.

#### Equity Considerations

The ability of individuals to participate in the RMA processes is likely to vary considerably depending on a number of factors: Socio-economic status; education; ability to write and speak English; access to information on RMA procedures; ability to purchase advice. The ability of groups to participate effectively also varies according to the mix of individuals involved. Business competitors, for example, are much more likely than individuals or interest groups to have the necessary resources at their disposal to defend their applications. They are frequently better funded, are more knowledgeable about the Act and are usually fairly experienced at challenging objections.

### Legal Aid

Legal aid is not available to public interest groups. Individuals may apply for legal aid but there exists very strict criteria for eligibility. Currently, individuals must earn less than \$16000.00 pa. and legal aid is only provided for representation by a solicitor. It does not, therefore, assist with paying expert witnesses or any other of the myriad costs involved. It also seems apparent that legal aid cases are no longer profitable forms of business for legal counsel. This has resulted in a widespread reluctance among legal counsel to take on such cases. In other words, the legal counsel most experienced in RMA cases are unlikely to accept legal aid cases. It may be, therefore, that they are more likely to represent large businesses or councils rather than public interest groups.

## ***4. Guidelines and Strategies for Encouraging Public Involvement***

### ***How can we overcome some of the obstacles?***

We have just identified key factors that prevent the public from becoming involved in resource management processes. By analysing the nature of these constraints it is possible to identify two fundamental prerequisite for an effective public participation process:

- information
- resources.

Some of the ways in which we can assist and encourage public involvement are explained in this part of the manual.

For participation to succeed it requires citizens, professionals and politicians to work together effectively to resolve legitimate disagreements and to fairly allocate environmental resources. This caaan only occur if an integrated process is encouraged. This is most achievable at the small scale, localised level where community interest is high.

<b><i>Key Points</i></b>
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<b>Objectives:</b>	clear and specific to the participation programme. The call for participation must be genuine - it is not satisfactory to set a policy or goal and attempt to force it on to the community.
<b>Process</b>	incremental and sustained - not ad hoc, ritualistic or tokenistic
<b>Method</b>	the diversity of consultation techniques should reflect the diversity of communities
<b>Resources</b>	provide direct support in terms of funding, professional skills and time

<b>Timing</b>	early as possible and before any major decisions are made or work completed
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## *Keywords*

**GENUINE - EARLY - ACCESSIBLE - DIVERSE**

### *How do you encourage public involvement in policies, plans and special projects?*

The following is a list of ideas in no particular order:

- Improve understanding of the RMA and associated rights and procedures. Run general education programs to raise public awareness and to demystify the process. Incorporate into school syllabus, Continuing Education courses, community centre workshops.
- Run annual Sustainable Community days which include workshops on a variety of topics (for example vehicle emission standards or urban containment). Include displays from business and community groups - emphasise the importance of robust and responsive communities.
- Implement Local Agenda 21 regime - integrate principles across all plans, policies and activities.
- Develop understanding of locally perceived problems and values.
- People are more likely to become involved if they feel the proposal will affect them directly or has an adverse effect upon their lives. Hence it may be effective to couch proposals in language that describes how people may be personally affected at the individual level.
- Involve the 'popular' media in local planning issues - radio, newspapers, popular magazines. Encourage interviews and ongoing coverage of day to day resource management issues. Encourage television documentaries on interesting case studies.
- Develop partnerships with universities in setting up a framework for consultation.
- Bring 'neighbourhood action packs' (crude cut-outs to the same scale of every amenity and utility in the neighbourhood) to local community meetings. People work in groups to develop their own model.
- Establish 'help desks' at consent authorities specifically designed to give advice and assistance on submissions to plans and resource consents. Advertise the help-desk and encourage people to use it.
- Compile a public promotions kit on submissions - explain how to do it and why it is important.

- Find ways to become more involved in public interest and recreational groups in the community as a means to understanding the social structures of communities and neighbourhoods. Send a planner to community group meetings or invite groups to visit the planning department.
- Planners to seek advice and input from Councillors and Community Board members when deciding whether or not to notify an application - especially when attempting to identify 'affected persons'.
- Compile a data base of information on all matters pertinent to Iwi. This may include Iwi planning documents, case law, relevant Treaty claims, articles, submissions and guidelines.
- Community boards can initiate neighbourhood support/advice groups for people submitting or getting involved.
- Consider providing free access to a team of professional experts/consultants.
- Consider providing financial assistance or a specific fund for those parties who cannot afford to pay
- Investigate ways of making the hearing process less daunting. Consider having them in local community centres or in places where the applicants and submitters are likely to feel comfortable.
- Provide training for local authority workers and representatives in communication and participation techniques eg. facilitating meetings; conflict resolution; brainstorming etc

### ***How do you encourage participation in the resource consent process?***

#### *Identifying 'affected persons'*

Resource consent officials need to be particularly vigilant when receiving and evaluating the applicant's Assessment of Environmental Effects. It is their responsibility to ensure that all the persons affected by an activity have been identified and consulted. Therefore they need to have a comprehensive understanding of the dynamics of the communities which are likely to be affected. They need to be able to apply a broad and wide-ranging approach to identifying affected parties whilst constantly questioning the limitations of their knowledge and understanding. They must recognise that communities are forever changing and that those in the most weakest positions are often the most invisible.

Guidelines for good practice could be produced by each local authority to assist those involved with the identification of affected persons and in the determination of notification. These might include:

- The crucial elements of the various sections of the RMA and the circumstances to which they apply should be set out.
- The effect of case law, common pitfalls and theoretical examples to be set out.

- Written approvals to be provided on a standard form produced by consent authorities which contain a description of the reasons why consent is being sought and the implications of the provision of such consent.
- Require copies of plans and other documentation to be either initialled and attached to written approval forms or have reference to such documents as being sighted on written approval forms.
- Checklists of various community features and profiles should be provided.
- Persons who have provided their written approval should be contacted to confirm they understand the nature of the application and the adverse effects.
- Visit sites to ensure correct identification of affected persons.
- Contact Community Board member or Local Residents Group if unsure about who is affected.
- Give a contact phone number for affected persons to ring for advice if they are unsure about any part of an applicants proposal.

How can we reach people with information?

- lend a planner to groups
- community meetings hosted by community boards
- focus groups
- working groups
- video, telephone, internet and electronic media
- town hall meetings
- graffiti
- competitions
- take models of proposals around the neighbourhood on the back of a truck
- newsletters/flyers
- information booths on site
- large signage close to site
- full page adverts in community newspapers (including those who cater for non-English speaking communities)
- brochures and models in supermarkets, cinemas, pubs, markets and malls
- posters at bus stops
- street banners
- library displays
- special publications

### ***Considering a proposal or consent?***

#### A draft checklist of questions

- Who might be adversely affected by this proposal/application/policy?
- Who benefits from this proposal?
- Have I applied a localised perspective to deciding who may be adversely affected?
- Am I satisfied that written approval has been sought from every person who may be adversely affected?
- Have I thought about possible effects on future generations?
- Has the consent be advertised in a variety of medium?
- Can people identify their own interests?
- Have they gained more power to control their own affairs?
- Am I reaching the poor? the under-educated? the apathetic?
- Does it need to be placed in specific catchment areas? eg supermarkets, schools, recreation areas, bus stops etc
- Do I encourage questioning?
- Do I give relevant responses?
- Am I the right person to present this plan/proposal? Can I talk with my audience?
- Have I thought about all the different activities that take place in and on this site or locality?
- Have I thought about all the different people that utilise this site or locality?
- What cultures are evident (or obscured) in the locality?
- Is the area used by the unemployed?
- Is the area likely to be used by women who care for children or families?
- Does the area have particular significance for particular groups or communities?

## *Draft Checklists for Action* <sup>4</sup>

### **1. Issues**

- DO preliminary work to establish what are seen by people as the issues. DON'T conclusively pre-define the issues before the exercise begins.
- DO realise that people don't see their lives in strict planning topic terms: DON'T insist on boundaries.
- DO start by asking what are the issues that concern/are a priority for the tangata whenua. DON'T start by defining the issues as perceived by pakeha and then ask what is different for Maori.
- DO anticipate demands about service delivery and have a strategy for dealing with these.

### **2. Getting Out**

- DO go out to talk to groups. For example, tenants associations, childcare groups, community projects with a lot of users, Maori, pacific islander, ethnic minorities and women's groups.
- DO go out to groups on their terms. Accept their timing - for example resident groups may meet in the evening, but childcare groups are more likely to meet in the day.
- DO make personal contact with members as they are more likely to respond. DON'T just send out a letter inviting yourself - follow it up with a phonecall.
- DO target groups, be clear about the basis on which you do this.
- DO target groups whose members' views are traditionally under-represented in consultation.
- DO target also those groups likely to be interested - be prepared to draw on the interest and expertise in the voluntary sector.
- DO realise funded groups are more likely to be able to respond in detail; be prepared to delegate consultation to groups like this.
- DO keep consultation lists up to date: ensure that it is on someone's job description.

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<sup>4</sup> from London Planning Aid Service (1986) Planning for Women United Kingdom

- DO try and reach more isolated people eg through door-to-door surveys, opinion surveys in public places eg shopping centres. DON'T do this on the cheap - it's only worth doing if properly resourced.
- DO accept that consultation with some Maori and ethnic minority groups is best done by members of that community.
- Do use venues that are accessible.

### 3. Timing

- DO allow a reasonable length of time for responses: DON'T just rush things through.
- DO accept the length of time it takes for groups to consult their members and users.
- DO go out to consultation at a reasonable time of the year. DON'T go in late December.

### 4. Materials

- DO make publicity attractive and simple, eg leaflets, tear-off questionnaires, reply pre-paid material.
- DON'T send out wads of paper with too much technical information
- DO highlight the relevant issues briefly.
- DO translate material. DON'T translate it in a token way but make sure it has an equally full content as the material written in English.
- DO make sure it is good translation: involve the relevant community and be prepared to pay for their translation skills.

### ***Who are some of the groups or individuals we might need to approach or consider?***

#### A draft consultation list

Maori Organisations - Trust Boards	Community Boards
Pacific Island Organisations	Unions
Women's Organisations	Science and technology
Sports and Leisure groups	Education
Political groups	Cultural groups
Farmers/primary producers	
Business/commerce	Arts groups
Trade/Industry	Youth
Home Owners and Property Owners	Children
Environmental Groups	Asian
Residents groups	Tourism

Unemployed  
People with disabilities  
Marginalised groups  
Gay groups  
Churches  
Welfare groups

Community Workers  
Aged/Grey Power  
Homeless/dispossessed  
Sex Industry  
Neighbourhood community centres

## ***APPENDIX***

The information in this Appendix has been sourced from Taylor, Hobson Bryan and Goodrich (1995). This is an excellent source of suggestions on sound consultative practices and information methods. For further elaboration on the ideas summarised below see Chapter 8 (written by associate author Gerard Fitzgerald).

## ***1. Twelve basic anti -participation ploys<sup>5</sup>***

### **Act now, argue later**

The simplest and best of the lot, if you can get away with it. It involves building over the footpath, or felling the preserved trees, or allowing the listed building to fall to pieces, without telling anyone. With luck, the environmentalists won't find out until it's too late to do anything about it.

### **Divide and rule**

Another old favourite, dating back to Roman times. It is designed to split objectors into three or four little camps, all at one another's throats.

### **The bogus choice**

Allied to the above. You take all the possible options, eliminate the ones you don't want people to think about, add a few dummy ones to make up the number, and then offer them to the public.

### **Marking**

So-called from Mark Ch.4 v12: 'That seeing they may see and not perceive, and hearing they may hear and not understand.'

### **Stone walling**

Another golden oldie - the only equipment needed is a waste-paper basket.

### **The cotton-wool wall**

You treat the objectors with the utmost courtesy and consideration, supply them with all the information they ask for, listen carefully to everything they say, and then go ahead just as if nothing had happened.

### **'Go away you rude little child'**

"We always listen to responsible comments, but we are less likely to do so when they are accompanied by insinuations of the kind contained in your letter." Practically an admission of defeat.

### **Passing the buck**

There are two sub-ploys here - Crude ("That's the responsibility of the department") and Refined, practised between officers and the members of a council. The officer says "There's a good deal in what you say, but it's the Councillors who decide policy and our job to implement it". The Councillors say, "There's a good deal in what you say, but we employ experts to advise us and it would be rather silly not to take their advice".

### **Jam tomorrow and jam yesterday - but never jam today**

The would-be participators are told, either that the scheme is already committed and they should have made their observations earlier, or that it's only a gleam in somebody's eye and it's much too soon for comment. The magic moment for participation is always in the past or the future.

### **Confusionism**

Long, detailed answers to points that are almost (but not quite) the ones the objector has raised.

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<sup>5</sup> Howard, A. The great participation fallacy The Planner 62 #6 (1976) p 163

**Nice Person**

You write the worried or indignant householders a soothing letter, assuring them that their views will receive the fullest consideration, that the by-pass is unlikely to be built for many years - in fact, assuring them of anything that will make them shut up and go back to sleep and let you do the same.

**'I'm only trying to help you'**

You invite the objectors to an interview, or seek them out during the adjournment of a hearing, and tell them that in their own interests they really should withdraw - otherwise they'll lose credibility, become a laughing stock etc.

**2. Communicative Strategies: Some pro-participation Ploys<sup>6</sup>****Cultivate community networks**

Make wide use of liaisons and contacts, rather than depending on the power of documents, both to provide and disseminate information.

**Listen Carefully**

Gauge the concerns and interests of all participants in the planning process to anticipate likely political obstacles, struggles, and opportunities.

**Notify people early**

Let less-organised interests know early in any planning process of issues affecting them (the more organised groups whose business it is to have such information won't need the same attention).

**Educate**

Educate citizens and community organisations about the planning process and the 'rules of the game'.

**Supply information**

Get technical and political information to citizens to enable them to be informed and participate effectively.

**See**

That community neighbourhood, and not-professional organisations have ready access to public planning information, local codes, plans, and notices of relevant meetings, and consultations with agency contacts, 'specialists' supplementing their own 'in-house' expertise.

**Encourage**

Community-based groups to press for open, full information about proposed projects and design possibilities.

**Develop skills**

You need skills to work with groups in conflict situations, rather than expecting progress to stem mainly from isolated technical work.

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<sup>6</sup> Forester, J Critical theory and planning practice J of the APA p275-286

### **Use informal channels**

Emphasise to community interests the importance of effective participation in informal processes of project review, and take steps to make such design-change negotiation meetings equitable to professionally unsophisticated groups.

### **Be independent**

Encourage independent, community-based project reviews and investigations.

### **Be politically sensitive**

Anticipate external political-economic pressures shaping design decisions and compensate for them - soliciting 'pressure we can use' rather than minimising external pressure altogether.

## ***3. Community-based and Consultative Techniques<sup>7</sup>***

**Community worker, action research:** Specialist stimulating public discussion on issues, or researching issues for discussion and action. Requires trained or experienced person, infrastructure, and possibly access to research resources, information etc.

**Consultation:** With and between groups, local authorities, developers, agents of change etc. Requires information to be provided, consultation skills, commitment to abide by outcomes, trust and skilful chairing.

**Charette:** An intensive planning exercise where a small group of participants spend a few meetings or days discussing questions relating to a specific problem, to reach a consensus view within a defined deadline.

**Community Advisory Committee:** Organised ad hoc or semi-permanent group of representatives from community organisations, neighbourhoods, etc who review, discuss, evaluate and advise on planned changes on behalf of the community.

**Community/liaison forums:** Public forums for the ongoing debate of relevant community issues. Requires neutral facilitation, resources for communications etc.

**Delbecq:** A group process for impact assessment. With the help of an assistant, small groups identify and list social impacts, discuss and order them in terms of importance by voting. Process can be then be repeated with the large group. Requires main facilitator, assistants and venue.

**Dialectical scanning:**Particular group discussion technique using a facilitator, which attempts to identify impacts of a proposal. Impacts which are subject to disagreement are debated further to reach a resolution.

**Freephone/hotline:** A telephone based system where callers receive or give information on issues. Toll calls are paid by sponsor organisation. Could be staffed or unstaffed.

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<sup>7</sup> Fitzgerald G, Community-based and Consultative Techniques, in Taylor C N et al, *Social Assessment: Theory. Process and Techniques*, Centre for Resource Management, Lincoln University New Zealand (1990) pp 202 - 220

**Impasse:** A Group activity or game for assessing impacts. The group is provided with information about a proposal or policy. This is discussed and impacts identified. Smaller groups (of 3) then score each impact according to severity or value. The scores of each small group are then used to provide an overall score for each impact.

**Information Centres/Displays:** Can take the form of a permanent office (eg shop with street access) or a mobile centre eg van or bus, where information is presented.

**Lobbying:** Applying pressure by individuals or groups on politicians in order to influence decision making, policy formation etc.

**Workshops/Seminars/Hui:** One to three day exercises looking at specific issues or wider, long term planning questions.

**Written Material:** Includes brochures, booklets, reports etc distributed by a variety of means.

**Radio (and Talkback):** Local radio including University, Polytech and access radio.

**Role Playing/Simulation Games:** People take on roles of others or various actors in the community or authority in a real, simulated or analogous planning situation.

**Scenario Assessment:** Proposals and their alternatives are assessed for their outcomes and impacts using scenarios. Groups assess the scenarios and the results are compared. Groups can be used to address only one scenario each. Can be implemented using surveys eg Delphi

**Newsletters:** Can take a variety of forms and be produced at what ever frequency is required. Mostly used by local authorities and established organisations.

**Newspapers:** Community, local and regional newspapers, specialist magazines etc.

**Option Scoring:** List of options and/or problem statements developed into a questionnaire. People then asked to indicate choices or rate/rank issues, within a set of constraints, in terms of importance for their neighbourhood or group.

## ***If you want to know more...***

### ***The following resources were used to compile this manual:***

Sarkissian, W. and Perlgut, D. 1986: *The Community Participation Handbook*, Impacts Press Australia

(This is an excellent 'how to' guide on all aspects of public participation. It includes sections on programmes and techniques, case studies, how to run effective public meetings and how to deal with conflict. It also has a seventeen page bibliography which includes Australian and overseas references.)

Arnstein, S. 1969: A Ladder of Citizen Participation, *Journal of The American Institute of Planners* , 35, 216 - 224

Brooker and Friend 1991: *Resource Management*, Wellington

Chapple, K 1993: Effective Environmental Advocacy, in Milne, C. (ed) *Handbook of Environmental Law* , Royal Forest and Bird Protection Society of NZ, Wellington

Fookes, T. 1988: Public Participation: Options for Legislation, *Resource Management Law Reform Working Paper #17*, MfE Wellington

Gleeson, B. 1994: Where Gold Speaks: Ethical Dilemmas Arise, *Planning Quarterly*, 115 (September) 1994

Palmer, K 1994: Opportunities for Public Participation Under the Resource Management Act, *Environmental Law Reporter* 1(1):6, 15-17

Palmer, K 1993: *Local Government Law in New Zealand*, (2nd Ed), Sydney: The Law Book Company Ltd.

Penny, E. 1994: Public Participation-the Reality, *Environmental Law Reporter* 1(1) 17-18