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# MAKING THE PROCESS TRANSPARENT

ISSUES RAISED IN A REPORT COMMISSIONED BY THE  
MINISTRY FOR THE ENVIRONMENT, INVOLVING AN  
INVESTIGATION INTO THE ADEQUACY OF THE  
PROVISIONS IN THE RESOURCE MANAGEMENT ACT 1991  
AS THEY APPLY TO THE APPROVAL OF SUBMISSIONS ON  
RESOURCE MANAGEMENT PLANS WHERE THE IMPACT OF  
THE SUBMISSION IS LIKELY TO HAVE SIGNIFICANT  
ENVIRONMENTAL EFFECTS.

the Environment Court as to whether the submissions were correctly referenced. In summary, the Environment Court ruled that CCC should renotify a summary of the submissions relating to the rezoning requests for the land at Montgomery Spur. 950 additional submissions have since been lodged with CCC. Hearings have been completed and the rezone request was declined. This decision has been appealed in the Environment Court.

After completing an investigation, the PCE wrote to the Ministry for the Environment (MfE) expressing a concern on whether there are sufficient safeguards in the Resource Management Act 1991 to ensure that the appropriate level of scrutiny and consultation was being undertaken before local authorities accepted submissions on proposed plans which have significant environmental effects.

MfE invited Opus Consultants to consider these issues and other similar case studies from around the country for the purpose of preparing a good practice guideline. Five examples are reviewed in the report.

## THE ISSUE

One of the perceived weaknesses with the present system of plan submission and decision-making is that landowners and local residents are often unaware of the plan process and the potential for land development implications contained within the proposed provisions. In some cases, people do not become aware of these issues until development occurs that directly affects them. When, or if they do become aware, they have often missed the opportunity to lodge a submission to the council.

## OPTIONS

Various options to resolve this issue are discussed in the report. These include:

- A review of the summary of submissions provisions;
- A separate notification process for significant submissions on proposed plans;
- Use of variations or plan changes; and
- Improved consultation processes.

## BACKGROUND

The Parliamentary Commissioner for the Environment (PCE) reported in late 1998 on a high profile case involving the Christchurch City Council (CCC) and local residents. It involved submissions seeking that land be rezoned from rural (Rural Hills) to residential (Rural Living). This is now commonly referred to as the 'Montgomery Spur case'.

The planning officer recommended a decision to accept the submissions in part. However, concerns were raised about the implications of allowing for this type and scale of development, and that there were many residents in the area who were unaware of the issue until it was reported in a local paper. These residents missed the closing date for lodging submissions and further submissions, so were unable to be 'party to proceedings'.

In response to a formal complaint from two local residents, CCC sought a declaration from

In summary, it was concluded that legislative changes to the Resource Management Act would not ensure more effective participation in the submission and decision-making process. Therefore, the report includes a 'good practice guide' to assist decision-makers in their deliberations on these matters.

## A GOOD PRACTICE GUIDE ON THE PLAN SUBMISSION AND DECISION-MAKING PROCESS

The full text of the guide is set out in the report prepared for the Ministry for the Environment and is available on request. In brief, the good practice guide provides advice on, amongst other topics, process and consultation issues and s32 assessment.

### *Process and Consultation Issues*

In order to avoid concerns about whether the correct notification and submission processes have been followed, planning officer reports to plan hearings may include a summary assessment on whether there are any relevant process or consultation issues which require consideration by council.

### *s32 Assessment*

This could include a statement as to how acceptance or rejection of the submission would meet the requirements of s32 of the Act.

If councils are not satisfied that they can meet the requirements of s32, then council could undertake to:

- Refuse the submission in whole, or accept it in part;
- Require further information from the submitter in the form of an assessment of environmental effects (AEE);
- Undertake the AEE themselves and use these findings to assess the merits of the submission. The decision to use this option should be weighed against the access to the necessary information and expertise, and the cost and time implications;
- Refuse the submission/s and resolve to

initiate a formal variation process; or

- Refuse the submission/s and indicate that the applicant could initiate a plan change when the plan is operative.

### *When to Use the Plan Variation or Plan Change Process*

Where councils consider that a submission made on a provision or issue has merit, variations or plan changes could be initiated. The decision to undertake a variation or plan change could be considered under the following circumstances:

- When a submission is to be rejected,
- The acceptance of a submission/s would have significant adverse environmental effects beyond the boundaries of the site in question,
- When integrated resource management could only be achieved through an additional consultation and decision-making process,
- The submission relates to the use and development of a strategic community resource,

- Limiting the plan submission and decision making process to minor amendments rather than significant or fundamental changes raises concerns about the ability of the private individual to make significant and positive changes to a proposed plan and uncertainty for the community if the issue is not resolved.

## CONCLUSIONS

The range and complexity of issues raised in submissions on plans means that it would be difficult to make changes to the Resource Management Act 1991 which would ensure that all potentially affected parties have equal rights and abilities to influence the plan submission and decision making process in a cost effective manner.

The good practice guide provided in the report is one way of trying to assist local authorities 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, but the submission has merit, the Resource Management Act provides mechanisms for Councils and landowners to put forward proposals through separate statutory processes. However, a more

complex issue is how to effectively inform landowners and the general public about the plan and the implications of being parties to the plan submission and decision-making phases. This is an issue that needs to be addressed by the resource management profession.

## FEEDBACK ON THE REPORT AND THIS ARTICLE

The Ministry for the Environment welcomes comment on the report and guidelines. If you would like a copy of this report and guide or would like to make comments on the matters raised in this article please address your enquiry to:

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Since writing this article John has left Opus Consultants and has started his own business named Environmental Planning Solutions. 

“ LANDOWNERS AND LOCAL RESIDENTS ARE OFTEN UNAWARE OF THE PLAN PROCESS AND THE POTENTIAL FOR LAND DEVELOPMENT IMPLICATIONS CONTAINED WITHIN THE PROPOSED PROVISIONS ”

- The insertion of new rules and conditions proposed in a submission/s would impact on and contradict provisions contained in other parts of the plan.

### *Factors to Consider before Initiating Variations and Plan Changes*

Councils should also be aware of the implications of not accepting submissions, and requiring additional consultation, submission and hearings processes.

These issues include:

- Considerations of the cost and time implications of initiating variations or rejecting a submission in favour of a plan change;
- 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;