

# WHEN SHOULD PEOPLE BE PAID TO PARTICIPATE IN PLANNING MATTERS?

By Rob Harris

*The Open Polytechnic of NZ*

**A**fter four years of the RMA, iwi and other community interest groups feel disempowered, in part because they feel impelled to protect taonga or heritage without the resources to do so. Unlike local authority or agency employees and business people, community groups and iwi personnel are usually unpaid and/or over stretched. In Maori circles the stress placed on treasured kaumatua or Kuia is ironically called 'death by hui.' While the cost of participating is a wider policy issue to be addressed, the ongoing use of key interest groups as consultees is arguably unfair and is an issue that should be specifically addressed by local authorities.

In order to maintain the breadth and reliability of input it is reasonable to consider developing consistent policy on the 'rules' of consultation in order to avoid burnout and retain public involvement. Rules or protocols on resourcing participation are quite separate from legal aid as such, (which is a separate issue), but should still be based on fairness and equity and be designed to be reasonably able to achieve RMA and similar purposes.

## **ARGUMENTS FOR AND AGAINST**

Iwi and other interest groups are frequently involved in ongoing comment on applications and policy. When one examines the role of Maori elder in particular, they often do a remarkable job, particularly as they are not usually trained or backed up by the councils that depend on them for the 'Maori' perspective. Funding for iwi planning documents, which would make things easier for all parties, is also usually not available.

The major characteristic of most expert groups is that they are powered by volunteers, ranging from over

stretched parents and spouses, to business people with numerous commitments elsewhere. If they have permanent staff, those staff are not funded to input into planning matters, but are usually funded to work in their area of expertise, sometimes literally at the grassroots. If they should be involved in commenting on areas within their expertise, eg, instream conservation or cultural matters, their needs are to receive enough support to participate on a meaningful level. Secondly, to receive a professional level of payment if they provide a professional service.

Paying people to be involved in planning decision-making and information gathering is controversial, because it appears to compromise the traditional local government convention of free citizen involvement in public issues. While this is a vital democratic principle, it should be qualified where the process has clearly moved beyond that of ordinary participation-see below. The RMA process is currently managed on the cheap, which is one reason why so many people are disenchanted and the issue of resourcing is a matter of anger on many marae and in numerous organisations.

Industry interests are also sometimes fearful that paying members of the public may encourage anti development factionalism. The present approach of freeloading on the community may enhance this effect already. The most likely scenario arising from a payments regime, based on the psychology of group dynamics, is that all else being equal, validating someone's knowledge increases that persons sense of care for achieving a better result. Experience of working parties also suggests that this effect is enhanced when the process is well

structured and supported by adequate information, a key element in all successful participatory exercises, whether in commerce or public issue consultation.

An advantage perceived by some planners is that overall planning effects assessment will improve, because information on the environment is enhanced by local knowledge.

A related rationale for financial support is that participation up skills the community generally and lets variant groups work alongside each other, ultimately an important basis for a public-conflict based process to work. The downside of such a regime for a council is that councils will have to define what they do more effectively and allocate funding accordingly.

A separate rationale for resourcing participants is to enable the public to cope with a far more complex planning environment (exacerbated by the transitional architecture of new plans and policy statements). Given that Government has set up the RMA process, there may be an argument that it is also responsible for the legitimate costs of expanding the planning task. It is probably unreasonable to continue to expect unpaid, amateur participation in a working party or repeat 'working' situation, when this is a professional task and the responsibility of the process managers.

Typical examples of a working group demanding public expertise are those set up to frame trade waste bylaws or waste management policy, where the exercise may have implications for a community some 10-50 years ahead. Another scenario is a section 99 or, 268 additional dispute arrangement where participants are expected to develop an agreement on complex technical matters, where the meetings may cover months.

## **GUIDING PRINCIPLES**

To avoid unnecessary expenditure the first consideration should be whether the situation warrants payment. The appropriate test for this is whether the task or involvement is beyond that expected of a normal submittee exercising the right of formal submission. Working parties requiring

intensive and, or, repeat participation are arguably of this type, as are situations where a group is expected to comment repeatedly because they have a recognised interest "beyond that of a normal member of the public", eg, in terms of section 274 of the RMA. In some cases it may be helpful to regard these organisations as akin to members of expert review panels. The test for their involvement is whether they can realistically be affected by an application or policy in terms of their focus.

Such recognition may be via separate statutory recognition as in the case of iwi or Fish and Game Councils or less formally as with community associations or conservation groups. The organisation or individual in each case is essentially chosen or chooses to participate by reference to local environment and planning needs, eg, mahinga kai, wetland bird habitat, etc, and community dynamics. Hopefully the political preferences of local authority officers or politicians will have less weight in the selection of who should be involved.

A second and related consideration is whether the recognised interpretation of legislation requires the specific input of key groups in the community, eg, iwi participation arising out of sections 6(e), 7(a), and 8, in order to interpret sustainable management or other purpose. There is an onus on "all persons exercising functions and powers under" the RMA to "recognise and provide for", "have particular regard to", or, "take into account", as the case may be. This arguably applies not only to the content, but also the process, if it is managed in a way that precludes the gathering of information affecting these matters.

This approach is present in *Air New Zealand and Others v The Wellington International Airport Authority HC 1991*, where, among other things, one of the principles of good consultation was defined as the act of consulting in such a way as to provide sufficient resources to enable consultation to occur.

A more indirect application of that principle would also control the exercise of functions and powers under the Act in the process of managing and

gathering information with respect to matters set out in various sections. Applying this principle fairly and equitably would require planning authorities to act in a way that provides for due consideration of that principle in the carrying out of their duties.

In many cases the payment of participants will not be necessary; in other cases, and iwi matters are a good example, resources supplied to participants are inherently necessary for the authority to carry out its responsibilities. Note, a planning authority equally cannot expect an applicant to provide for information gathering that goes beyond the boundaries of the application or, the responsibility of the applicant, see *Airfric Developments Ltd v Wellington Regional Council* W111/1994.

In an age where information ownership and outside consultancies are recognised and provided for in local government and finance legislation, there are no good general arguments for not recognising that key functions should be resourced irrespective of the provider, particularly where interest group or iwi contributions are such that they cannot easily be performed by the authority within its existing staff competencies. The effects based approach inherently means that most general purpose authorities are not geared to the collection and interpretation of certain kinds of specialist information or community perceptions. This situation is no different in principle from the council hiring a consultant to assess the risk posed by a contaminated site.

In implementing a resourcing policy, consideration should be given to the principle of fairness. Resources should not be given, eg, to an individual or group where there is no relation to a specific or special task arising out of a duty in legislation, policy making or, the submission process. Participants with an equal legal and or subject interest should also have an equal right of involvement, but the test is whether they have a subject expertise or focus. Where Additional Dispute Resolution is concerned the process should be well advertised and payment or resourcing be carried out through the authority or

Tribunal rather than other participants.

## CONCLUSION

Problems arising from the planning process have frequently arisen out of uncertainty and the still formative nature of our resource data bases. While this will improve as information is acquired, there always will be situations where amateur participants are overburdened by the scale and nature of the issues. Because certain types of information and decision-making are also the property of select parts of the community, we stand to lose some of the visionary advantages contained in the RMA if we don't tap into other ketes of knowledge. Inherited legalism and an under resourcing has led to important points of view being under represented, to society's cost. Sustainable management may therefore not be promoted in these circumstances given the meaning of environment set out in the RMA.

While it is probably reasonable to suggest that many professionals are floundering in putting forward representation, they at least are resourced to participate in meetings and comment on applications, albeit at a minimal level at times. There is in

fact a good general argument that the management of process and expectations on local authorities to move to an effects and knowledge based regime have been grossly under funded. Central policy makers may have assumed that they can achieve two for the price of one. The likely result however, is that both will suffer.

Improving confidence in the process does arguably depend on adequate resourcing, of group involvement, but this is only one mechanism by which the purposes of resource legislation can be implemented. Education for participants and more effective resource surveys are even more basic to achieving legislative purpose.

The legal processes of the RMA are an arena in which fundamental decisions are made and fundamental negotiations carried out on the disposition of societal resources. If we have any commitment to good process at all, we need to think more about protocols for involving people and more about resourcing process within that arena. It need not be hugely expensive as, realistically, it should be by way of targeted aims and implementing the appropriate protocols to achieve those aims, a process well recognised by the framers of section 32.