

PUBLIC PARTICIPATION FROM A RESOURCE USER'S PERSPECTIVE

The following is a response by Katie Mayes,
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to KJ GRUNDY'S article *Empty Promises? Public Participation Under the RMA*
which was published in the August issue of *Resource Management News*.

KJ Grundy raises a number of extremely valid points in his article "Empty Promises? Public Participation Under the RMA" published in *Resource Management News* in June. If I may summarise an already edited version of the original paper for readers who did not see the article, Grundy discussed the growing community concern regarding the public's level of involvement in the resource consent process. The main reasons given for this concern are lack of resources, the threat of cost awards, the frequent use of non-notification of proposals and the weight (or lack thereof) accorded to community views.

I wholly agree with Grundy's comments regarding the problems which can result from the community lacking resources to be involved in the consent process. This lack of resources is particularly noticeable when a hearing relies on expert witnesses or sophisticated legal argument (some readers may think there is no other kind), both of which do not generally come cheaply. Cost (including direct and indirect financial cost, threats of cost awards and transaction costs - which are not mentioned by Grundy but can nevertheless be significant) can also prevent the community from pursuing appeals.

Grundy refers to "growing disquiet" from community and environmental groups regarding public participation in the planning process. However this disquiet is not confined to environmental groups. Developers are also concerned about how the consultation process is being managed by councils and used (abused?) by some submitters. This response is intended to complement

Grundy's article by presenting some observations regarding developers' most commonly stated concerns.

SUBMITTERS' (AB)USE OF PROCESS

While community and environmental groups are concerned that public participation is being used to legitimise developments favoured by developers, developers are equally concerned that the process is being used to cater for individual submitters interested in the effects of an activity on themselves, rather than on the environment in a broader sense. In a more sinister vein, some submitters appear to be more interested in the potential financial and indirect gains that can be made from submitting against a proposal or procrastinating about giving written approval.

As stated earlier, cost can prevent the community from pursuing appeals. However, cost does not stop some groups lodging an appeal of a decision without any real intention of following through to the Environment Court. This frustrates the process as well as the developer, and is unlikely to lead to optimal environmental outcomes. Appeals can be withdrawn without any real fear of financial penalty because of time delays for appeals to be heard.

With regard to these two points, Grundy does not present a balanced view of the consent process. Just as stories abound about greedy developers "buying off" innocent members of the community, just as many exist about innocent developers being "held to ransom" by greedy members of the community.

"PURCHASING" WRITTEN APPROVAL

Grundy puts a negative slur on what he calls a "compensation market", where developers "buy" the written approval of affected parties. While I agree that the concept is often of real concern where a person is compensated for effects on the wider environment, in my opinion, purchasing of written approvals may be acceptable where it is limited to compensating a person for effects of an activity on that person. In this regard, I agree with Grundy that the planning process must be fair, and be seen to be fair as it is crucial that everyone has confidence that decisions will result in the level of protection of the environment envisaged in the Resource Management Act 1991 and community's plans.

COUNCIL MANAGEMENT OF PROCESS

Coupled with the concern that the process is catering for individual submitters rather than assessing the effects of an activity on the environment is an unwillingness by some councils to identify "affected parties", and to make decisions in the face of disagreement between an applicant and a submitter.

There is a real tendency by councils to adopt the "squeaky wheel" principle and identify any party who puts pressure on the council as an "affected party", without looking at whether an application will in fact affect that party. Consulting with additional parties not only involves time and cost, but also means that matters that are not relevant to a council's decision will be canvassed. Presuming that a plan correctly

identifies the significant resource management issues, this additional consultation is unlikely to result in better environmental outcomes.

In my opinion, Grundy wrongly states that the purpose of gaining written approvals from persons "who may be adversely affected" is to provide testimony of community acceptance of a development. Written approvals are sought from persons "who may be adversely affected" precisely for the reason stated - because they are the people who may be affected. In this situation, people in the community need not be involved in the consent process because they are not "adversely affected" by the application.

THE WEIGHT ACCORDED TO COMMUNITY VIEWS

Grundy also considers that councils and the Environment Court do not take sufficient cognisance of community views in the planning process. This is not my experience. I consider that, in general, views of the community are being taken extremely seriously by councils, sometimes to the exclusion of scientific evidence and fact.

In addition, some councils are unwilling to make decisions in the face of disagreement between an applicant and a submitter, preferring to leave the applicant and submitter to agree on an acceptable outcome. Abdicating responsibility in this way can lead to discussions about matters which are extraneous to the plan, involving unnecessary time and money.

One conceptual problem that appears to be behind the statements in Grundy's paper relating to the weight given to community views is confusion between community views relating to the environmental effects of an activity and community views on other matters such as employment opportunities, economic value and social desirability of a proposal. This may reflect a difference in interpretation of s5 RMA, a topic which has been the subject of many theses and is not appropriate to canvass in this article.

When determining consent applications, councils are limited to assessing the requirements of the relevant plan(s) and regional policy statement as well as

Part II matters of the RMA. Other matters must be dealt with by communities as part of their provision of "their social and economic well being". Whether that be by demonstrations, letters to the media or the Annual Plan process of councils is not important within the context of a resource consent application.

S94 RMA

Although I agree with Grundy that non-notification of consent applications is premised on the demand for efficiency in the planning process, I am more positive and consider that this is a step forward. In fact, I consider that the RMA does not go far enough in the situation where an "affected party" does not give their approval to an application. In this situation, an application fails to meet the test in s94 and must be notified, with the delay and costs that this entails. This is despite council already identifying that the members of the wider community will not be "adversely affected" and that the application will have no more than a "minor" effect.

In my opinion, an amendment to the RMA which provides for (identified) "affected parties" who do not give written approval to present submissions and attend a hearing in the same way as occurs at present, without notifying the application, would increase the efficiency of the planning process while retaining input from those people who are affected by an application.

STATUTORY DOCUMENTS - PLANNING PROCESS

An important outcome from the comments made by Grundy and in this response is that all members of the community, including environmental groups and developers, should become more involved in plan (and policy statement) development. In many cases the plan development process is not being utilised sufficiently, despite it being a cheaper and easier process to be involved in than individual consent applications, and despite the fact that more can be gained from involvement in the planning process at this stage than from waiting and debating the acceptable level of environmental

effects during individual consent applications.

Plans set out what the community considers to be significant resource management issues and important values, and policies and methods to manage adverse effects on those values. Plans also set out what constitutes a "minor" effect on values via performance standards and consent categories and enable "affected parties" to be clearly identified. It follows that it is the provisions of plans which determine if the test for non-notification in s94 RMA is satisfied.

This places a real onus on councils to ensure public participation in plan development is effective. Involvement of the community is obviously important for far more than helping councils determine if applications should be notified. Community involvement in plan development is crucial if the plan is to reflect the concerns and aspirations of a community.

CONCLUSION

In my opinion, the lack of participation by the public in the plan development process is a major element in the community's frustration with the resource consent process but one which is overlooked by Grundy in his paper. Other factors which are fuelling concern are, as Grundy recognises, lack of resources particularly at hearings and appeals, and the threat of cost awards if appeals go ahead.

If the community becomes more proactive in the plan development process, rather than relying on making submissions to individual consent applications, subsequent deliberations by councils to notify or not to notify consent applications may not be the source of the problem as suggested in Grundy's article.

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