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RESOURCE MANAGEMENT AND THE COMMUNITY

IS THERE A NEED FOR A
COMMUNITY BASED LEGAL
SERVICE FOR RESOURCE
MANAGEMENT ISSUES?

WHAT IS IT THAT IS
REALLY NEEDED IN
PRACTICE?

The Resource Management Act encourages public participation in the resource management process, particularly in the processing of the resource consent application. The RMA imposes many duties on applicants, provides powerful rights for neighbours and other affected parties and yet most of these participants are not legally trained.

In order to improve the public understanding of the RMA the Ministry for the Environment (MfE) promotes services and projects to better educate people about resource management issues in New Zealand. The Ministry is of the opinion that the quality and geographical spread of community based resource management legal advice, the availability of resource management law related information, and the education opportunities for communities related to environmental legislation still needs improvement.

However, there is already a lot of general information available from MfE, Councils and environmental organisations. Councils, Community Law Centres and Citizen Advice Bureaus are available to give information, answer enquiries and give individual legal advice to a certain extent. Public and private organisations occasionally offer workshops and seminars about the RMA. Therefore, is there an unmet legal need for resource management law in the community?

PURPOSE OF THE
INVESTIGATION

The Whitireia Community Law Centre undertook a research project ("the project") in order to determine whether there is in fact an unmet legal need in the area of Resource Management in the Wellington Area. A secondary purpose of the investigation was to identify services that could be provided by a community based, non-commercial organisation, such as community law centres, to meet any identified unmet legal need.

SOURCES OF INFORMATION

For this purpose, the author made contact with a number of organisations, individuals and groups and through a series of interview participants shared their experiences concerning applications and submissions on resource consents.

The participant individuals and groups can be divided into three categories:

- Resource consent divisions of several Councils within the Wellington Region,
- Professional planning consultants and resource management lawyers,
- Community environmental groups, interest groups and residents association.

In addition to the information provided by participants, the research referred to various printed material provided by MfE and the consulted councils.

The questions focused on the consent application process; from the viewpoint of an applicant for resource consent and from the viewpoint of an objector concerned about the effects of the proposal. Emphasis was placed on the stage following obtaining initial resource consent information and before Environment Court action. The reason for that emphasis is that from the authors perspective there is comprehensive material readily available, either from councils or from the Ministry for the Environment detailing the application process. For matters that are appealed to the Environment Court a special legal assistance fund is available from the MfE.¹

RESEARCH RESULTS

The results of the project are summarised as follows:

Good information (brochures, booklets etc.) is very important for the understanding of resource management issues by the public. However, the project did not discover a need for publishing additional information concerning basic issues under the RMA. The available information from Councils and from MfE is sufficient to cover this need.

Law related education, in the form of seminars or workshops, has to address specific

topics and has to be adjusted to the special needs of groups and individuals confronted with resource management issues. The various interest groups in the wider community have different needs and concerns that have to be addressed individually. Presently, there is no noticeable audience for general public education concerning basic issues under the RMA in the Wellington area. A community legal service, (seminars, workshops) therefore needs to address the specific interests of environmental groups in the community.

According to the participants, the main focus of a free legal service, dedicated to resource management law, should be giving legal information, advice and assistance to the parties in the resource consent application process. For applicants of resource consents, a legal service could assist with preparing applications and with dealing with affected parties. However, the major need for free legal service is in the area of submissions to resource consent applications. The information and advice available from Councils to objectors to resource consent proposals is considered insufficient in practice. Unlike applicants, affected parties/objectors are usually not assisted by planning consultants or solicitors because affected parties usually have no direct financial interest in the proposal.

Legal representation at council hearings while not considered to be of paramount importance could nevertheless provide for a more focussed submission. Such representation has to be determined on a case by case basis. Assistance prior to the Hearing is regarded as one of the key areas of advice a legal service could offer. Legal assistance at hearings before the Environment Court is highly recommended, but requires expert knowledge and experience.

A. Local Authorities

A survey over the information and opinions given by councils shows that there is a need for:

- improving the general understanding of the District Plan/RMA by the public.
- helping the applicant preparing the application, especially the assessment of environmental effects.
- improving the consultation process with affected parties at an early stage of the application.
- legal assistance in resolving disputes between the applicant and the affected parties.

- enhancing the understanding of the affected party's consent.
- legal assistance and legal advice for affected parties who are unsure about their legal position.
- legal information and legal advice for submitters.
- improving public knowledge about relevant and non-relevant effects under the District Plan/RMA (what one is allowed to do on his/her own land under the RMA).

B. Planning Consultants and Resource Management Lawyers

According to the interviewed Planning Consultant Companies and Barristers, the key areas of advice for a community based legal service should be:

- reviewing applications (checking whether consent is required).
- providing assistance for negotiations between affected parties.
- providing legal advice to affected parties whether and in what form an objection would be reasonable.
- providing assistance in the preparation of submissions.
- presentation at hearings.
- if the party does not agree with the council's decision: reviewing the main areas of concern and checking whether an appeal would have any merit.
- assisting/representing affected parties in mediations and Environment Court hearings.
- assisting with review of council's decisions not to notify an application.
- assisting parties to enforce side agreements.

C. Environmental Groups, Interest Groups and Residents Associations

The participating environmental groups, interest groups and residents associations are very different with regard to their objectives, functions and modes of operation. The information given by them was not homogenous; each group has its own issues and concerns with regard to resource management matters.

None of the consulted groups was in urgent need for legal assistance or law related education. The participating groups have been in business for a long time; they are familiar with the consent application process and have resources for legal assistance at their disposal.

Most of the groups reported that they

occasionally receive enquiries for legal advice. The groups would appreciate it if they could refer such enquiries to a free legal service in appropriate cases. The participants unanimously stated that the focus of such a service should be giving legal information and legal advice to objectors of resource consents. Assistance concerning the observation and enforcement of consent conditions and side agreement was raised as another important issue.

Apart from that, the various groups have different needs for legal service, which has to be served individually. It would be up to the advisory organisation to address these special needs by consulting the groups and offering an adjusted service.

CONCLUSION

In many common situations that occur in the process of resource consent application, people can be in need for qualified assistance. Planning consultants do offer such assistance; however, employing a planning consultant is not suitable in all situations. The problems facing people involved in the resource management process are often not a lack of general understanding of resource management processes, but a lack of reliable information and practical assistance in specific resource management issues. The RMA is a complicated piece of legislation, and people cannot be expected to know about the details of the Act.

The structure of community based advisory groups, such as community law centres and citizen advice bureaus, might enable them to establish such a service. The overall opinion of the participants was that a community based, high-quality free legal service for resource management matters would be beneficial for all parties that are involved in resource management issues.

The full report "The Need for Legal Education, Legal Information and Legal Advocacy under Resource Management Law in the Wellington Area" is available from Paul Drake at the Hutt Valley Community Law Centre, suite 201 Apex House, cnr. Laings Road & Queens Drive, Lower Hutt (Ph 04 568 8964; Fax 04 566 0316; email: paul@huttlaw.org.nz).

FOOTNOTES

1. MfE, Environmental Legal Assistance Fund. *Leonard Baer is a solicitor from Germany. This report was part of his research for his Masters of Law degree at the Victoria University of Wellington.*