

BY TANIA RICHMOND, PRINCIPAL PLANNER, AUCKLAND CITY COUNCIL

RESOURCE CONSENT REPORTING

THE PLANNER'S REPORT PROVIDES PROFESSIONAL ADVICE, AND ALONG WITH THE APPLICATION AND THE ASSESSMENT OF ENVIRONMENTAL EFFECTS ASSISTS THE DECISION-MAKER TO ARRIVE AT AN INFORMED DECISION.

Writing a report on a resource consent application is one of the key tasks of a regulatory planner. The planner's report is used as the central document that assesses the merits of a resource consent application. It is the document that can bring together various expert opinions as well as offering a recommendation and where approval is recommended, a set of consent conditions. In those limited instances where the reporting officer has the delegation, the report also contains the decision.

Section 42A of the Resource Management Act 1991 (the Act) sets out that written reports may be provided on any matter set out in s 39(1), which includes under s 39(1)(b), an application for resource consent. The limited case law on the purpose of a report appears to be directed at applications that require a hearing. The principles are however, applicable to the vast majority of applications that are held without a hearing. These principles are that the report must be seen as simply one piece of evidence which is before the decision-maker and in the interests of natural justice, the decision-maker must make the decision themselves, not merely adopt the recommendation of the reporting planner. This paper explores these principles and challenges a number of assumptions around reporting on resource consent applications.

SUB-DELEGATION NOT PERMITTED

As pointed out in the recent High Court case of *Videbeck v Auckland City Council* [M.1053-SW/02], if the decision-maker merely adopted the recommendation in the report without further consideration, this would be de facto sub-delegation, which is not permitted under s 34(4) of the Act. In this case, Justice Heath noted that if the report is the only document that the decision-maker refers to, then this must be a balanced document.

THE OVER EMPHASIS ON THE PLANNING REPORT

While I agree that a planner should present a balanced report, a decision-maker should not in my view, rely on just the planner's report to make a decision, no matter how balanced the report. This places far too much emphasis on the planner's report rather than the application itself. The

material submitted as part of the application, including the assessment of environmental effects (AEE) is the starting point for the decision-maker, not the planner's report.

I could be cynical and question how many decision-makers actually read the application material, bothering only to read the planner's report? We know that in the majority of instances, the decision-maker adopts the reporting planner's recommendation. If no other document is referred to, then the role of the reporting planner does in fact become one of decision-maker. Whether the decision-maker is an officer of council or an elected representative, they must look beyond the planner's report if they are to practice good decision-making. Although as noted out in *Videbeck* (paragraph [34](b)), the experience and expertise of the decision-maker, particularly where they are not elected representatives, is an important factor in the decision-making process.

It is anticipated that where the decision-maker is an officer with planning experience and expertise, technical explanations and more fuller reporting is not required. The experience and expertise of the delegated officer is not of course a matter that is documented as part of the decision. This is considered to be inherent in the council delegating a decision making power to the officer.

Because of the need for expediency and efficiency, few councils prepare separate decisions that document what factors were taken into account by an officer who exercises a resource consent delegation. As a consequence, it is the planner's report that bears the brunt of criticism of the decision and in some cases, the application and assessment of environmental effects are overlooked.

WHY IS AN AUDIT APPROACH NOT BEING USED?

While the Resource Management Act intended that the applicant would provide a comprehensive assessment of effects and the council's assessment would be an audit, the reality is often far from the truth. The reasons for this are twofold.

Fitly, not all applications comprehensively cover the matters that councils need to consider so many councils apply a 'customer service' approach and will often undertake the assessment for the applicant as part of the planner's report.

Secondly, even where an application has been

comprehensively prepared by a planning consultant or professional experienced in resource management, there is still the tendency to fully report on the application rather than use an approach of reporting by exception or confirmation and endorsement of another expert's opinion.

There is a high level of discomfort on the part of council planners (and decision-makers) to use the audit approach. There are no doubt legal issues that limit a council from relying solely on the opinion of professionals engaged by the applicant, as the council cannot absolve itself from its decision-making capacity. But this is not what the audit approach involves. It still requires the need to explain the reasons why a conclusion and decision has been reached and it should be clear that the relevant matters have been fairly considered. The reasons should deal with the substantial points that have been raised and leave the reader with the view that the principal points have received proper consideration: *Barton v Licensing Control Commission* [1982] 1 NZLR 31 (HC), noted CCA, 1st Series, J-23.

Perhaps because of the lack of use of reporting in an audit format, it has been mooted in planning circles that councils should adopt 'an approved planning consultant' list. A planning consultant who was lucky enough to make it on such a list would submit applications to the council (presumably with a complete analysis, not just an assessment of effects under the fourth schedule) and the council planner would undertake only a cursory review of the application and planning consultant's assessment. This approach would, in my view, be sub-delegation and therefore be no less of an injustice than sub-delegation to the reporting planner.

The on going complaint about the 'double assessment industry' is nothing new, and is often raised by those who voice opposition to the Act. Legislative changes, particularly along the lines of that proposed in early drafts of the Act's amendment, (which was not unlike the concept suggested above of 'an approved planning consultant' list) are a knee-jerk response to this double assessment industry. Mind you, with the lack of improvement in practice, even when councils faced the threat of radical change, who can blame some of the protagonists for attempting to legislate for good practice.

SO WHY IS DOUBLE ASSESSMENT STILL OCCURRING?

It would appear that there is a lack of confidence

that an audit report can meet the legislative requirements of decision-making and its need for the analysis and reasons for a decision to be transparent.

It would seem that unless the reporting planner has written out their assessment in full then their analysis has not taken place. In many instances, their assessment pays little regard (if any) to the AEE, or at its worst, the reporting planner's assessment is an almost word for analysis of the AEE. This must leave the poor planning consultant wondering why they bothered. This approach is not just limited to planners but specialists involved in resource consent assessment such as landscape architects and traffic engineers. This approach is also not just limited to council decision-making, but also occurs more often than not, in the Environment Court. Obviously, the stakes are higher in the Environment Court, but if there were agreement between parties, duplication of evidence, particularly matters of fact, would appear unnecessary.

There is reluctance on the part of decision-makers to move away from the planner's report being the document that covers all the issues in a manner to the satisfaction of the decision-maker. For the same reasons that the reporting planner feels the need to document in detail their analysis, the decision-maker needs the comfort in seeing that 'someone independent' has reviewed the application.

So who is perpetuating this over abundance of analysis? Is it the reporting planner or the decision-maker? As planners we need to take responsibility for our own assessment. It is also our role to educate and provide the necessary level of comfort to decision-makers that are used to seeing an officer's report that more or less stands on its own without reference to the application. Decision-makers especially planners in senior roles who are acting under delegated authority need to encourage and support reporting planners to take this leap of faith and they themselves need to look beyond the planner's report as the decision document.

As noted earlier, because of the need for expediency and efficiency, few councils prepare separate decisions that document what factors were taken into account by an officer who exercises a resource consent delegation. If no separate explanation is provided for where the decision-maker has a slightly different analysis that may or may not lead to different reasons for granting consent or certain conditions, the decision-maker must rely on the planner's report reflecting all their matters for considerations.

TEMPLATES

The current approach to reporting and decision-making could be one of the reasons that councils spend considerable time and effort in 'perfecting' the templates that planners use as the basis for reporting.

Most large councils have their own in-house best practice guides that are a mix of council procedure and best planning practice. The most frequently referred to best practice tool is a template for reporting on resource consent applications. Even the smallest of councils would have a template that planners use as a guide for reporting on applications. This may have the format of the council's particular reporting style, but in almost every case, there is standard text, phases and terminology.

The *Template for Quality Processing of Resource Consents* put out by the Ministry for the Environment and Local Government New Zealand reiterates the case law on the purpose of an officer's report.

Notified reports "The hearings/officers report serves to advise the decision-maker(s) (hearings committee or commissioner(s), or if no hearing was held, person with delegated authority) on the matters to be considered. This ensures that an informed judgement on the application can be made."

Non-notified reports "The purpose of this report is to advise the decision-maker of the matters to be considered thereby enabling them to make an informed judgement on the application."

In each case, there is advice that, "the scope and depth of a report should reflect the scale and significance of the proposed activity".

The *Template for Quality Processing of Resource Consents* also advises that "where a comprehensive AEE is provided with an application, has been checked and approved by staff and is not disputed by any affected persons, this can be referenced in the officer's report to avoid duplication".

In the case of a non-notified report where the decision-maker is likely to be a senior officer or Council Planning Manager or Senior Planner, the guide suggests the following should be in a report template.

- Property Information
- Section 94
- Assessment of effects
- Conclusion/Recommendation including any conditions if consent approval is recommended.

Continued on page 23

From page 18

Standard templates can reduce reporting time by removing the need to type in the more mundane text and thereby allowing the planner to focus on the value added assessment whether this is a full report or an audit. Beyond the humble template, complex decision trees can be created which auto-format the bulk of a report. These types of document generators are extremely useful when there are a clearly defined number of questions that have a fixed output. However, where there is a default answer the user can have the tendency to switch off. Careful consideration needs to be given before deciding the options or default answers that are presented to planners. Complex auto-generated data and standard text also relies on the source data being accurately summarised and put in context. There is also the need to ensure that the data is kept up to date, for example that plan changes or legislative changes are reflected in the options or standard text. Because of the reliance on the planner's report, a large amount of auto-generated text often appears in reports on the belief that this is providing proof that all substantial points have been carefully considered. Auto-generated text does not however, provide proof of assessment.

With any automated system that ultimately involves expressing an opinion, it cannot remove the need for a case-by-case analysis by the user. Unfortunately, templates and document creation tools can create the tendency for the user not to want to change the standard text or auto generated text. Planning, even the simplest of resource consent applications, is not paint by numbers. There will always be the need to step outside the framework of a template. While this may create a risk that the planner may not address all the relevant issues, it is better that the analysis is relevant to the matter at hand rather than trotting out meaningless text that adds no value no matter how much false comfort this appears to offer the decision-maker.

Technology whether in the form of a template with pre-formatted text or complex document generators that are linked to various databases has provided planners with the ability to re-produce text from documents such as the RMA and local and regional plans at literally the push of a button. It is not however, the volume of text which makes good analysis and decision-making, but the quality of the assessment of the reporting planner and in turn, the proper consideration of all the relevant matters by decision-maker.

CONCLUSION

There are many excellent resource consent planners, but as an observation, it would appear that resource consent planners need to spend less time writing (or rather, selecting preformatted text) and more time analysing the merits of a proposal. Planners need to be able to demonstrate that they have read and considered an application. This means being able to articulate their opinions to the decision-maker, and provide succinct written analysis, conclusions and recommendations.

Producing a report on an application without any reference to a well-prepared AEE in my view shows a lack of respect for a fellow professional. Where the reporting planner concurs with the opinions expressed by a planning consultant or resource management specialist but fails to leave the written analysis at that point is unnecessarily adding to the costs of compliance.

Decision-makers must look beyond the planner's report. The planning report is not the decision, the application and the AEE is the starting point for the decision-maker. The planning report should not be undervalued, but nor should it be elevated beyond what it should be, a document that provides professional advice to assist the decision-maker to make an informed decision.

