Environmental Management by Local Authorities
under the Resource Management Act 1991

ASSESSMENT OF ENVIRONMENTAL EFFECTS (AEE): Administration by Three Territorial Authorities

Background Report
MARLBOROUGH DISTRICT COUNCIL CASE STUDY

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

PO Box 10-241, Wellington, NEW ZEALAND

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This report is one of three territorial authority case studies undertaken as part of an investigation into territorial authorities' administration of the assessment of environmental effects. Conclusions from the three case studies are synthesised in a main report, which is available through Bennetts Government Bookshops. A brief summary of findings and suggestions for good practice, drawn from the main report, is available from this Office on request.

The examples chosen within the case studies are more representative of "controversial" rather than "typical" consent applications for the councils concerned. Although this does not represent the usual council workloads, it is a useful indication of whether the councils effectively deal with more difficult issues and applications for activities that may have significant impacts on the community.

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1 COUNCIL STRUCTURES AND PROCESSES

1.1 Structures for resource consent processing and evaluation

Resource consent processing and evaluation are functions of the Resource Management and Regulatory (RMR) Department of the Marlborough District Council.

The evaluation of consent applications (resource planning) comes under the responsibility of the District Planner who also has responsibility for building control, environmental health, plumbing and drainage, and resource monitoring. Currently there are ten resource planners and one senior resource planner who report to the District Planner. The processing and documentation of resource consents is handled by a senior consents officer, administration officer and nine consents officers. Consents staff also often deal with initial and routine counter enquiries. In addition there are four strategic planners who are principally responsible for plan preparation, but who may from time to time provide input into resource planning matters.

Most consent applications are heard by the Council's Resource Management Hearings Committee, a permanent subcommittee of the Resource Management and Regulatory Committee, which has wide delegated powers. Further discussion of the Council's decision-making structures is found in sections 3 and 7.

1.2 Resources for resource planning

The workload for assessing resource consent applications has increased steadily since the Council's inception as a Unitary Authority in July 1992. Numbers of resource consent applications handled were:

1992-93 year:	1060
1993-94 year:	1514
1994-1995 half-year (to end of 1994):	929

This exceptionally high and varied workload has undoubtedly put considerable stress on the RMR Department and has given rise to a significant increase in staffing levels. In July 1992, there were five resource planning officers and there are now eleven, with a mixture of experienced officers and new or recent graduates on permanent staff. Present staff experience, excluding that of the District Planner, ranges from new graduate to ten years' experience, with an average of approximately four years. Previous experience of staff not recruited as new graduates is varied, including a number who have had regional council experience. Present annual salaries of these staff range from the $25,000 -$30,000 bracket to the $40,000 - $45,000 bracket, with an average of approximately $34,000. The District Planner is an experienced, professionally-qualified practitioner who has had many years of service in Marlborough County and District.

A number of comments from interest groups and consultants suggested to the investigation team a fairly widespread perception that turnover of resource planning staff is unduly high. Council management felt that staff turnover is no higher than would be expected, given the number of younger staff. The number of younger staff may

contribute to a perception of high turnover. Council management acknowledge that the staffing situation is still stabilising following the inception of the District Council as a Unitary Authority (most of the planning and regulatory staff of the former Nelson-Marlborough Regional Council were located in Nelson) and that, along with many other councils, they have had some difficulty in recruiting experienced planning practitioners. Only limited use is made of resource planning consultants, partly because few practise in the Marlborough-Nelson regions. Consultant planners (principally from Works Consultancy, Wellington) have however been used extensively for strategic planning, and occasionally to assist with resource planning at times of peak workload.

Funding allocated since the inception of the Unitary Authority to the Council's Environmental and Consents functions (excluding capital expenditure) is as follows:

Year	Total funding ($M)	% from User Charges
1992-3	1.404	54
1993-4	1.442	58
1994-5 (est.)	1.586	46
1995-6 (planned)	1.587	46
1996-7 (planned)	1.554	47

Council spending on all regulatory functions is 16% of total direct council expenditure.[1]

1.3 Fees

Council policy on resource consent fees is to recover reasonable and actual costs for processing and evaluation. Most types of application (excluding very large ones) are based on a standard fee. Council is at present reviewing all fees. See also section 8.4.

1.4 Training

Most resource planning staff have specialist tertiary planning qualifications, coming from several New Zealand universities. Some, mainly more experienced staff, have obtained other qualifications such as B.Sc., LLB., B.Ag.Eng. or NZCE. Two younger staff have postgraduate qualifications, in planning and environmental information systems.

The Council is supportive of staff who wish to further their qualifications. Costs of approved courses are refunded. Staff have been sent on one course on management of environmental effects, in 1992, but the Council finds the cost of sending staff on courses very high, so it has organised two in-house training sessions in the last two years. In addition, it annually organises broad-ranging in-house training sessions for RMR staff, which include brief coverage of environmental assessment functions.

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[1] Deloitte Touche Tohmatsu Survey of Local Authorities, *Management*, April 1995.

1.5 Processes for resource consent applications

Over the first years of the Council's existence, a routine procedure for processing and evaluating resource consent applications has been developed. It now appears to be well established and well understood by staff and councillors. A flow chart has been prepared which details all the steps in the process, covering the stages of: pre-application discussion, receipt and distribution of an application, initial assessment, acceptance or deferral, notification (if required), submissions process (if required), preparation of report, hearing (if required), action on decision, and completion of documentation. The senior resource planner is responsible for allocation of applications to resource planning staff and for seeing that applications go through the system efficiently. Resource consent statistics are reported to Council regularly.

In the 1993-4 financial year about 80% of non-notified resource consent applications were processed within the statutory timeframe of 20 working days. The main reason for non-achievement of timeframe performance standards was said to be insufficient staff resources. In the first quarter of the 1994-5 year increased staffing levels led to an increase to 90% achievement of the performance standard.

Comment from outside professionals confirmed the generally satisfactory timeliness of consent processing. Some individual applicants, however, have expressed frustration at the amount of time it has taken to process and approve applications. The validity of their concerns and reasons for any delays have not been investigated.

1.6 Documentation

All applications for resource consents use the same basic form. This form has a "how to apply" covering sheet which is clearly written and easy to understand. Most resource consent application forms also have a separate general information sheet on the assessment of environmental effects (AEE) process. This is also clearly written, describing what is an AEE, how, why, when, and by whom an AEE should be prepared. The information sheet includes the Fourth Schedule of the Resource Management Act verbatim (an up-to-date version as amended by the Resource Management Amendment Act 1993). To give more detailed guidance on what to include in the AEE, for most types of consent the Council provides separate, more detailed, guides for AEE specific to different types of applications. These are also clearly written and include appropriate detail.

2 CONSULTATION PROCEDURES

2.1 General

General procedures for consultation are laid out to applicants in the covering notes provided with application forms. Applicants are informed that Council staff will advise on whom to contact. There is a standard form for written approval of person(s) likely to be adversely affected. Council has compiled a list of about 60 community or administrative organisations, including iwi, which may wish to be consulted for approval, and this is the basic source of information for advice to applicants on whom to consult. Consultation issues are further discussed in section 8.1.

2.2 Iwi consultation

In Marlborough District there are at least eight iwi with tangata whenua status. As recognised in the Regional Policy Statement, these iwi are: Ngai Tahu, Ngati Apa, Ngati Koata, Ngati Kuia, Ngati Rarua, Ngati Toa, Rangitane, and Te Atiawa. Because of the number of iwi, and the fact that the boundaries of their respective rohe are a matter of some internal tension, applicants had problems with identifying the relevant iwi to consult during the resource consent process. Consequently the Council has put in place a streamlined process. It has appointed a Maori consultant, who is the iwi representative on the Council's RMR Committee, to scrutinise all non-notified applications and to nominate the relevant iwi with whom consultation should take place. This allocation can be done quite rapidly. Notified applications are referred to all iwi. Applicants and consultants whom the investigation team spoke to find the process clear and relatively efficient. However some cases have occurred recently where one iwi has not been consulted with in areas where it felt it clearly had an interest, and it has subsequently requested that all applications are referred to it.

The role of Marlborough iwi in the consultation process, as affected parties, is discussed in section 8.2. At the decision-making level, one iwi representative has been appointed to the Council's RMR Committee, and one to the Works and Services Committee. The iwi representatives were nominated by a Council Maori Liaison Committee, which has since been dis-established.

3 UNITARY COUNCIL CONSIDERATIONS

3.1 Range of resource consent applications handled

The range of resource consent applications handled by a Unitary Authority is wider than for a Territorial Local Authority or a Regional Council. All five types of consent specified in the RMA are routinely handled by the Council, subdivided into more than thirty categories as follows:

Land use consent (8 categories);
Subdivision consent (5);
Discharge Permit (3);
Water Permit (5);
Coastal Permit (10).

All types of consent are handled with essentially the same procedures and using the same basic application form; but processes for assessment and analysis may differ, most obviously in respect of the information to be supplied as part of the AEE, as indicated by the type-specific AEE guidelines issued by Council.

In general, Council policy is for staff to avoid categorising their activities as 'regional council matters' or 'district council matters' but to integrate them as far as possible. This appears to have resulted in Council and staff achieving considerable unity of purpose, and undoubtedly was welcomed by the majority of people spoken to by the investigation team as a significant improvement in efficiency since the inception of the Unitary Authority.

3.2 Council as applicant

Under s 223 of the Local Government Amendment No. 2 Act 1989, a council's regulatory functions must be clearly separated from other functions. This applies especially when the council, or an organisation in which the council has a financial interest[2], is an applicant for a resource consent. The Marlborough District Council's Unitary Authority Code of Practice clearly documents procedures to be used in Council applications. (Such applications obviously occur within other types of Territorial Authorities as well, but less frequently than with Unitary Authorities.) The Code of Practice states that "in carrying out its responsibilities the RMR Department will apply exactly the same practices to Council Departments as to any other applicant". It was emphasised to the investigation team that this policy was vigorously adhered to, both for notified and non-notified consent applications. No members of the Regulatory Committee sit on other council committees.

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[2] In the case of the Marlborough District Council, these organisations are Port of Marlborough (NZ) Ltd, Marlborough Airport Ltd, and Marlborough Forestry Corporation.

3.3 Use of Hearings Commissioners

The appointment of Hearings Commissioners for decision making on some types of resource consent applications, under s 34 of the RMA, is now a well established practice for the Council. A Commissioner hears all resource consent applications from the Council or financially related organisations, or where there is any perceived conflict of interest for councillors. At present the Council has a pool of seven Commissioners available. The practice to date has been to have only one Commissioner per case. The use of two is not favoured because of the potential for hung decisions, while three is felt to be unwieldy and is very expensive. The power to appoint a Commissioner is delegated to the level of the Manager of the RMR Department. Commissioners have also been used recently to relieve overload on the Resource Management Hearings Committee for some types of applications. For restricted coastal activities for which the Council is the applicant, a committee is required to be set up which includes a member of the Hearings Committee and an appointee of the Minister of Conservation as well as an appointed Hearings Commissioner. Councillors are also entitled to sit in on applications heard by a Commissioner.

The primary qualifications looked for in Commissioners are familiarity with the Resource Management Act and some understanding of legal processes, as well as good understanding and experience of the context for local government decision making. Most Commissioners have a legal background although some have a technical background. No training is provided for Commissioners, because the Council feels that it does not have the capacity for appropriate training, and instead relies on the high calibre of appointees.

4 SUMMARY OF EXAMPLES

The examples described below show a somewhat different range to those selected for the Waipa and Upper Hutt councils, because of Marlborough District Council's Unitary Authority functions. Thus the applications discussed below include those for land disturbance for forestry, coastal permits for marine farming, and discharge consents.

4.1 **Beatrix Bay marine farming** (U940721)

Application: By the Marlborough Mussel Company, on 27 June 1994, for a Coastal Permit to occupy space in a Coastal Marine Area and to disturb the seabed.

Essential issues: Amount of information supplied in an environmental effects assessment, particularly the assessment of ecological effects, accompanying a resource consent application for marine farming permits.

Summary: The applicant is a local marine farming company, heavily involved in the marine farming industry, who had recently submitted a significant number of applications for additional marine farming sites. This application, including the AEE, was prepared by a consultancy firm frequently retained by the company for marine farming applications. The application, for a 5.6ha area in Beatrix Bay, Pelorus Sound, was outside the area allocated for marine farming in the Provisional Marlborough Sounds Maritime Planning Scheme (PMSMPS) and as such was treated as an exception to be considered against a number of criteria listed in s 20.3.3 of the Scheme.

The application was notified. Four submissions were received:

1) The Ministry of Agriculture and Fisheries submission was neutral with regard to the proposed coastal permit and concentrated on fisheries management issues.
2) The Maritime Safety Authority had no objection provided some suggested conditions were complied with.
3) Sanfords South Island Ltd opposed the application on the grounds of potential nutrient depletion.
4) The Department of Conservation (DoC) opposed the application on the grounds that it would adversely affect the amenity, scenic and aesthetic values of an adjacent scenic reserve and thereby be contrary to the principles of the Resource Management Act 1991 and s C20.3.2 of the PMSMPS.

Two companies, including Sanfords, had previously applied (in 1990) under the Marine Farming Act 1971 for areas very close to the present application site and had been refused permission on the grounds that a marine farm in this area would "unduly interfere with an existing use for recreational purposes and be contrary to the public interest by adversely affecting the visual aesthetics of the area."

The staff evaluation concentrated on the application in relation to the PMSMPS and the New Zealand Coastal Policy Statement, navigational issues, and the visual impact of the proposed marine farm on the scenic reserve. The analysis drew heavily on material supplied in the applicant's environmental effects assessment. The hearing on 15 September 1994 also concentrated on these aspects. Sanfords did not provide specific

further evidence on the question of potential nutrient depletion (but see section 5.4) and this aspect was not further referred to in the Council's decision.

The most contentious aspect was the visual impact of the proposed marine farm and its effect on the scenic and aesthetic values of the reserve, which is small but claimed by DoC to be the most significant area of indigenous vegetation in Beatrix Bay. DoC argued that under s 6 of the RMA, preservation of the natural character of the coastal environment was a matter of national importance and that this was supported by s C20.3.2 of the PMSMPS which states that "in general marine farms should not be sited adjacent to areas of high scenic value". DoC also considered that public access to the reserve would be restricted.

The applicants argued that the visual character of the bay had already been compromised by a number of adjacent marine farms and that this application would be in keeping with the New Zealand Coastal Policy Statement policy "encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal environment". The resource planner's evaluation concurred with this argument, concluding that "given that the farms on either side of the proposed farm can be viewed from the reserve together with the fact that very few of the surface structures proposed with this application would in fact be adjacent to the reserve, I do not consider the proposal would create a significant visual impact on the area."

Consent to the application was granted, with minor changes to the recommended conditions in line with comments made by the Maritime Safety Authority. The grounds for the decision stated that the outlook from the scenic reserve was already impinged upon by the nearby marine farms, and it was considered more appropriate to use areas which were already compromised by man-made structures, rather than to impinge upon areas of scenic value which were not. This was considered to be consistent with the NZCPS. It was also felt that this ruling was not inconsistent with the earlier decision to refuse consent, because the two rulings had been made under different legislation.

General comment on marine farming consents

Many issues in this case are similar to those raised by a large number of recent applications to the Marlborough District Council to occupy coastal space for marine farming purposes. Marine farming applications are probably the most significant and controversial resource consent issues for the Council at present. There are a very large number of applications being made (31 in the first quarter of 1995), including multiple applications on one site, and applications for sites previously refused under both the RMA and previous legislation. The volume of applications is clearly putting a strain on the Council's planning and consent processing resources and is of concern to segments of the industry and the general community. The amount of information supplied by applicants in their environmental effects assessments is also of concern, particularly to the Department of Conservation. The Minister of Fisheries and MP for Marlborough convened a meeting on 25 March 1995 to consider the situation and options for improvement, including a moratorium on applications until the Marlborough Sounds Management Plan has been notified. The Council notes that under present legislation it has no power to decline to accept and process valid applications. At present it is

developing further policy for its administration of the coastal marine area, including the possibility of rating occupied coastal space.

4.2 Port Underwood logging (U940012)

Application: By Underwood Farms Ltd, to afforest approximately 300 ha of land for commercial forestry (land use activity) and to road and clear fell approx 30 ha per year of mature commercial forest from 1994 to 2004/5, including construction of roading and logging landings (land use disturbance).

Essential issues: Conditions attached to a resource consent to mitigate the effects of an activity with a significant but relatively well understood environmental effect.

Summary: The application applied to a 870 ha company farm originally grazed but progressively afforested since the late 1960s, and now ready for logging to commence. The intention of this application was to apply for the whole farm area and the duration of the forest cycle, up to 45 years. Originally five resource consents were applied for, including dam construction, water permit for the dam, and a coastal permit in respect of intended barging operations, as well as the land use activity and land disturbance. The application was received in January 1994 and was preceded by about 6 months of discussion and consultation with affected parties. It was accompanied by a detailed AEE and proposed management plan carried out by a specialist consultant. This report discussed most aspects of the intended activities thoroughly, including whether standard Land Disturbance Plan conditions and performance standards could be met. The applicant had contacted about 80 affected parties, including 3 iwi, thereby hoping to get consents from all these parties and avoid notification. However this was not possible and the application was notified. The Council also felt that the application had to be notified in any case because of its scale and potential for conflict with other uses.

Clarification of the application proceeded over the next four months. Council staff sought further information on log loading zones, transport requirements, and barging arrangements. This process resulted in the applications for consents relating to dam construction and barging activities being withdrawn, and also the application for land use activity restricted to only 300 of the 870 ha, afforestation of the remainder being a permitted activity under the Marlborough section of the Transitional District Plan.

The resource planner's analysis noted submissions from six parties, three supporting and three objecting. The analysis noted that there was a potential for significant adverse effects on community wellbeing and on water quality, but that the proposal, together with the recommended conditions, provided for adequate mitigation of these effects. Recommended conditions were based on performance standards and best practices specified in the Council's Land Disturbance Plan, and also included a monitoring programme at the expense of the applicant. The Hearings Committee granted consent, subject to the recommended conditions, adding also a reminder of the need to comply with the provisions of the Telecommunications Act 1987, as a result of the submission from Telecom. See section 9.5 regarding monitoring of conditions.

4.3 The King subdivision (U941247)

Application: By Mr and Mrs F W and N A King, for consent to subdivide (allotment creation of less than 8 ha).

Essential issue: The requirement in the District Scheme of a minimum area of subdivision in order to maintain the versatility and productivity potential of the region's soils.

Summary: The applicants had purchased an 8.337 ha allotment in 1985 and had built up a successful export flower growing business. However at least half of their allotment was unused for this purpose and likely to remain so even taking into account future expansion of their business. The applicants thus sought to subdivide their allotment into two, each of approximately 4 ha, one of which would be amalgamated with a neighbouring 9.7 ha property in order to expand an apple orchard and vineyard operation on that property.

This required a resource consent as under the Wairau Plains Section of the Transitional Marlborough District Plan the relevant (Rural A) zone statement requires "in most cases ... the minimum area of subdivision to be 8 hectares", in order that "land on the Wairau Plains should be retained for productive use". An earlier (May 1990) application for a subdivision of the same property had been rejected because the Council considered that the integrity of the scheme had to be preserved, and that consent would have considerable impact beyond the site in question. An appeal of this decision to the Planning Tribunal also failed. The Tribunal ruled that the only effective ordinance (Clause 255(3)(a)) set an absolute minimum area for allotments at 8 ha; even though other clauses allowed the Council discretion to approve subdivisions below this standard, the Tribunal interpreted these clauses to be ultra vires and the subdivision to be non-complying.

Noting that a number of other subdivisions of less than 8 ha had taken place in their neighbourhood since 1990, the Kings made a new application in November 1994, their consultants stating that the proposal would clearly increase overall productivity of the two properties, was not reducing the productive potential of the land, and was not creating additional residential sites or demand for services. The consultant stressed that the subdivision was not creating an additional title as one block was to be amalgamated with an adjoining title. Thus the consultant interpreted the application as a boundary adjustment and contrasted it with the 1990 application, and it was suggested that the 1990 refusal of consent and subsequent Planning Tribunal decision was not relevant.

Other environmental effects referred to in the consultant's report included water availability, traffic considerations, density of structures (visual amenity), use of sprays, and reserve implications. A waiver of esplanade reserve provisions along a small creek running through the property was sought.

The consent of all neighbours and relevant iwi had been obtained and the applicants expected that the application would not be notified. However the Council resource planner's initial assessment was that a significant departure was sought, and that the application should be dealt with as a notified non-complying activity. Following representations from applicants' counsel, the notification was withdrawn, but the application was still dealt with as an allotment creation rather than as a boundary adjustment.

The staff evaluation was focused on the minimum subdivision area argument, in particular the proposal's compliance with clause 255(1) of the District Scheme. Other environmental effects of the proposal were seen to be minor. The evaluation concluded that "... the proposal appears to have some merit, certainly in the immediate future. However, Council must take the longer term view ... in deciding whether to grant or refuse consent." The resource planner did not make a recommendation to Council, and the Hearings Committee chairman declined to exercise his delegated authority and deferred a decision to a full committee hearing. This hearing took place on 9 February 1995. The evidence of Mr and Mrs King focused on the economic viability of the flower business and the potential of the proposal to enhance productivity of the two blocks.

Following the hearing the resource consent was granted, on the grounds that the proposal could result in increased utilisation of productive land, that the property was unlikely to drift into urban-oriented usage, and that granting consent would result in no more than minor adverse effects on the environment and would not be contrary to any national or regional legislation or policy. Conditions of the consent were that, following subdivision and transferral of the unneeded portion to the neighbouring property, both parcels of that property be amalgamated into one title. A footnote to the decision required that unimpeded access to and along the banks of Gibsons Creek was to be retained for maintenance by the Council's Works and Services Department.

4.4 The Clark subdivision

Application:

1. For a change to the Marlborough Section of the Transitional Marlborough District Plan, to rezone an area of 33.19 ha from Rural A to Residential C (Plan Change DP 15).

2. For subdivision (boundary adjustment), to adjust the boundaries between two allotments (consent application U920072); and for subdivision (allotment creation) to subdivide a property to create five residential lots and vest 22.9 ha as a reserve, and to remove existing self-sown pine trees over the area of the proposed reserve (consent application U930709).

Essential issues: The effect of a residential subdivision on steep land, especially on roadworks and residential properties below the proposed subdivision, and the ability of conditions of a resource consent to mitigate adverse environmental effects. This example also raised issues of communication between applicant, council and objectors, and what type of evidence is relevant at a consents hearing.

Summary: The Clark family's application, in August 1993, for subdivision at Karaka Point, Waikawa Bay, followed a long and complex history of planning and applications going back to 1982 when Mr Clark jnr first purchased land at Karaka Point. The 33.19 ha block which is the focus of this example was purchased in 1985 and originally used for rough grazing. The Clark family made applications in 1989 and 1990 to subdivide individual lots from the block; one of these applications was successful and one not.

In 1991 the Clarks applied to re-zone their land under s 60 of the Town and Country Planning Act. Owing to various delays, that application did not go ahead before the

repeal of that Act. In September 1992, application was made for a District Plan change under s 73 of the Resource Management Act[3]. This application was prepared by a Christchurch planning consultant and included a generalised AEE within a detailed analysis of the planning framework. The environmental impact statement included the comment that "if development proceeds, any house sites will require additional engineering assessment in accordance with existing provisions of the District Plan."

Both the AEE and its subsequent analysis by Council staff made extensive use of an earlier report on roading and stormwater issues in the area. The earlier report had been undertaken for the Marlborough District Council by a local consulting engineer in November 1990 following stormwater problems and complaints from residents. Some problems were attributed by residents to increased runoff from an access road to the Clark's property. This report included recommendations for remedial action and remains the most detailed assessment of hydrology and associated engineering aspects.

The application was notified and attracted 23 submissions, originally 14 opposed and four in support, and a further five in support when the submissions were notified. The submissions opposing, mainly from residents living below the Port Underwood Road (i.e., below the planned subdivision), covered issues including: piecemeal development affecting natural character of the coastal environment; lack of information; land stability and runoff; sewage disposal; and security of water supply. Submissions in support covered issues including: the need for residential sites; ability to provide environmental safeguards; lack of problems with existing developments; and preference for residential development to farming or forestry.

The staff evaluation, in summary, recognised that "a good case could be made for re-zoning the land" and for "careful, sensitive 'infill' development" in an area whose natural character was already compromised. On the other hand, "this is a very sensitive site ... a large and highly visible piece of land. The general area is well-known for local instability problems .... Any land disturbance, water supply and effluent disposal will have to be very carefully carried out to avoid adversely affecting those below the road."

At the hearing, in May 1993, the planning and environmental issues were quite thoroughly covered. Based on further information provided at the hearing a couple of the original objectors moved from total opposition to conditional support. Subsequently the Council approved the District Plan change, concluding that "there was potential for stable house sites" and "that it was possible to develop and use the land for low density housing with no, or very minimal, adverse effects to the environment or to existing residents."

Both the resource planner's report and the Council's decision recognised that there was potential for adverse environmental effects if subsequent development was not carried out carefully, but that these effects could be mitigated by appropriate conditions on the subdivision consents. The analysis noted the need for more detailed assessment of

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[3] At the same time, an application was made for a minor subdivision of the Clark's property, in the form of a boundary adjustment rationalising the existing titles in the event of further subdivision proceeding in the future. This application (U920072) was dealt with at the same time as the District Plan Change application but is not further referred to here.

individual allotments in any subsequent application to subdivide. The decision also specifically noted that subsequent consent applications for subdivision would be notified.

The application for subdivision was then lodged. This application was prepared by a local consulting engineer and surveyor. It was accompanied by engineering reports and a scheme plan, but under the District Scheme no separate AEE was required for a controlled activity. With the change of zoning of the land to Residential C, subdivision became a controlled activity and thus the focus of interest for this application was on the conditions imposed to mitigate potential adverse effects on residents below the subdivision.

There were eight submissions on the application, five in opposition and three supporting. The staff evaluation of the application concentrated on a set of recommended conditions for subdivision. At the hearing on 13 December 1993 verbal submissions from affected residents, together with earlier written submissions (including Council engineering staff), resulted in a number of significant additions and changes to the recommended conditions. The conditions imposed covered: easement provisions; building platforms and septic tank disposal; monitoring requirements; effluent disposal; stormwater disposal; private vehicle accessways; water supply; forestry agreement for vesting of the reserve; and review of conditions.

The Council also granted consent for land disturbance for the clearance of self-sown pines in the reserve area, subject to a number of conditions relating to environmental performance standards and best practice guidelines prepared by the Council for land disturbance activities. No AEE appears to have been prepared specifically for this application.

The applicants lodged an appeal to this decision in February 1994, seeking amendment or deletion of a large number of conditions. The Planning Tribunal judgement delivered by means of a Memorandum of Consent in August 1994 made technical changes to some conditions and allowed more flexibility on some others, but did not order any conditions to be deleted.

4.5 **The Blenheim Sewage Treatment Plant** (U940712)

Application: By the Marlborough District Council, for the discharge to air and water in respect of the proposed Blenheim Sewage Treatment Plant.

Essential issues: The consideration of alternative options for a sewage treatment plant, including AEE of those options, which would best address the concerns of all parties. This case also raised the issue of consultation on an issue of major public interest.

Summary: The background to this consent process was a long-standing concern about the quality of Blenheim's sewage effluent and its disposal into the Opawa River. In June 1992 the Nelson-Marlborough Regional Council granted a permit for the discharge of treated sewage into the Blenheim sewage treatment plant until December 1994. Key conditions of this permit were:

1. That the District Council conduct a monitoring programme to monitor the effluent and the impact of effluent on receiving waters, in consultation with key agencies and public interest groups.

2. That the Council complete an evaluation of options and develop a programme for the implementation of the disposal of sewage from Blenheim within two years of the granting of the discharge permit in June 1992. In addition, during the early stage of the evaluation process, the following organisations should be consulted: tangata whenua, the Nelson-Marlborough Fish and Game Council, Department of Conservation, the Marlborough Conservation Board, the Riverlands Residents' Association and representatives of the Marlborough District Council.

Thus a process was set in place. In September 1992 a brief for consultants was prepared which included providing an overview of the likely wastewater quality, environmental issues and costs associated with the selected alternatives, and identification of preferred options. A proposal from the consulting engineers Kingett Mitchell and Associates Ltd, in association with Duffill Watts and Tse Ltd, was accepted. In May 1993 the consultants presented a draft report detailing options. This report identified a large number of possible options and presented information on potential environmental effects of some of them, but no formal AEE was prepared at this stage. A separate study of the impact of the present oxidation pond discharge on the receiving waters was released in December 1992.

The draft options paper was the subject of a meeting of interested parties and subsequent written submissions from them. Options were then narrowed down to a shortlist of six and a further draft of the options report was prepared and summarised into a widely distributed brochure which outlined the preferred options for upgrading of sewage treatment and disposal. These options were discussed at a public meeting in Blenheim, on 19 November 1993, after which public submissions were invited. A final overview of options report was prepared; on the basis of this report and about 70 public submissions, Council decided on 14 December on a preferred option, which was the installation of additional aerated lagoons and provision of bacterial reduction, with continuance of discharge to the Opawa River.

The subsequent application for a consent to discharge to air and water was made by the Manager of the Council's Works and Services Department, on 31 May 1994, accompanied by an AEE report prepared by the Council's consultants. This report covered: the options development process and consultation; description of the planned sewage treatment system; environmental resources of the receiving areas; environmental effects of the treatment plant and discharge; effects of the treatment plant upgrading; statutory considerations; and suggested discharge limits and monitoring programme.

The Resource Management and Regulatory Department's analysis of the application was completed in October 1994. The analysis discussed the statutory framework and summarised the 22 submissions received, of which 15 opposed the proposal. The staff planner's evaluation of the application and AEE was brief, summarised by pointing out that the applicant may need to further address the following concerns or issues: the assimilation capacity of the receiving water for the PPCS discharge; combination with the PPCS treatment system; road sealing; biofilters; wetlands and discharge to the Wairau Lagoons or Lower Opawa Estuary; effects of the Wairau Bar on the tidal characteristics

of the river and estuary; reviewing the draft monitoring conditions; and the duration of the consent. Some useful technical notes for the hearing were appended to the analysis. The analysis recommended granting of the application and made suggestions for changes to the draft conditions provided in the consultant's AEE report.

Opposition to the application fell into three categories:

(1) from neighbours (although other neighbours were supportive);
(2) on the basis that there were better alternatives (the most frequently expressed category); and
(3) on the basis that the proposed conditions were not sufficiently rigorous.

There was significant overlap between the latter two categories, many of whom appeared to feel that the proposed option would leave Blenheim no better off than under the "interim" decision of 1992.

At the hearing before an appointed Hearings Commissioner[4] on 14-15 November 1994, evidence from the applicants mainly addressed technical and procedural matters, while evidence from submitters focused heavily on the question of whether there may have been better alternatives (especially wetland systems) to the preferred options. Because a detailed AEE had been prepared for only the preferred option, questioning and discussion of these submissions was subject to great uncertainty. Discussion regarding conditions for the consent, if granted, centred on the duration of the consent, as many of the other differences between applicants and objectors had been resolved through informal meetings before and during the hearing.

The subsequent decision granted the consent,[5] stressing the importance of commencing an immediate upgrade of the system using the preferred option, while recognising that many of the concerns raised by submitters could be dealt with by way of conditions, including the trialling of wetland systems. Consent was granted until 31 December 2005.

4.6 Other examples raised by contacts

A number of further cases have been brought to the attention of the Commissioner during the investigation. These cases ranged widely, covering the following broad areas of environmental management: subdivision issues, particularly the provision of esplanade reserves; human health issues related to industrial areas; coastal marine developments; use of hazardous substances; and effects of forestry activities on steep lands. In many but not all cases, allegedly inadequate AEE was said to have affected decision-making. With

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[4] A consultant environmental scientist was also retained by Council to assist the hearing, principally on wetland treatment issues.

[5] An appeal was lodged by the Marlborough Environment Centre but subsequently withdrawn following discussion with Council.

the exception of some matters previously reported by the Commissioner[6], none of the allegations made have been investigated, although some issues raised by them are briefly discussed in following sections. One particularly contentious issue was concern by some iwi and Marlborough Sounds residents that New Zealand Rail did not apply for a resource consent or prepare an AEE for the fast ferry operations commencing in December 1994. These concerns were recently dealt with in part by the Planning Tribunal[7].

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6 Parliamentary Commissioner for the Environment 1994a. re use of 1080 for possum control
Parliamentary Commissioner for the Environment 1994b. re potential contamination from two timber treatment plants.
Letter from J Cunliffe, Marlborough District Council, 30 September 1994, to the Parliamentary Commissioner for the Environment re progress report, Flight Anderson and Waters Avenue.
Letter from the Parliamentary Commissioner for the Environment to R Pennington, Marlborough District Council, 14 July 1994, re forestry operations in the Marlborough Sounds in relation to requirements of the Land Disturbance Plan.

7 Some of these issues were clarified by the Planning Tribunal ruling on the applications for enforcement orders and declaration relating to fast ferry operations (*Marlborough District Council v NZ Rail Ltd*, W40/95). The Tribunal declined to make orders, finding, firstly, that the fast ferries were a lawful and complying activity protected by the provisions of the Proposed Regional Coastal Policy under s 12, although protection afforded as a lawful activity did not absolve the operators from the duty imposed upon them by s 17(1) of the RMA; and secondly, that the Tribunal was unable on the evidence to find that under ss 17 and 314 the activity is noxious, dangerous, offensive or objectionable to such an extent that it has or is likely to have an adverse effect on the environment.

5 ENVIRONMENTAL EFFECTS ASSESSMENT BY APPLICANTS

5.1 Advice to applicants

Marlborough District Council attempts to provide detailed planning advice for applicants by having all resource planning staff available to discuss applications at the RMR reception desk. Consents staff usually handle initial contact and some routine enquiries, but as soon as a resource planner is assigned to an application that officer is expected to attend all enquiries relating to that application when he/she is in the office. Council managers are aware that this procedure can be disruptive to planning staff and in the past they have tried roster systems but feel the "assigned officer system" has more advantages. However at present council managers are considering the appointment of a 'consents enquiries officer' to deal with more routine enquiries and initial contacts, etc.

Council policy is to encourage early discussion of all resource consent matters including requirements for AEE. However, consultants who frequently prepare applications rarely contact council staff prior to the application. One problem with RMR staff taking a liberal approach to offering advice is that this can result in the resource planner virtually writing the application and AEE. Apart from the misuse of council resources to do this, this approach can create problems for the resource planner when evaluating that application. Council policy now is to encourage applicants at an early stage to get professional advice for critical issues, and to instruct staff to give specific advice in written rather than verbal form, where possible. Even informal written advice can be easily misconstrued. In the King subdivision example, an informal note from the resource planner, faxed to the applicants' consultant, discussed the significance of the application and initial staff reaction to it. The note was communicated to the applicants who apparently interpreted it as tantamount to a refusal of the application. This incident undoubtedly led to some of the communication problems in this example.

5.2 Applicants' expectations of the process

In all the examples studied, the applicants had engaged consultants and should therefore have expected an accurate assessment of the application process from them. The application of course belongs to the applicant, not the council, and while the applicant should expect reasonable guidance from council this should not extend to absolute reliance on that guidance. However in several of the examples studied, applicants' expectations of the process created obvious difficulties which lead to communication problems and frustrations. In the King subdivision, the Kings' consultant advised that the application was fundamentally different from their 1990 application. The Kings may therefore have felt that the later application was straightforward, and consequently not have appreciated why Council officers felt it was a significant departure from the District Scheme. This lead to the situation where staff felt they were merely trying to interpret the Scheme consistently and fairly, while the Kings felt victimised (see section 6.2). With the Clark subdivision, there were many communication difficulties, compounded by the long history of applications, delays at various stages, the large number of objectors who had both individual and shared concerns, and the fact that the applicants' key professional advisors were not local. The applicant does not appear to have appreciated that the assessment requirements for the Plan change and subsequent subdivision application were quite different.

Whenever they have the opportunity, Council staff clearly need to discuss with applicants and consultants the processes of resource consents and AEE, as well as the technical requirements.

5.3 Adequacy of applicants' AEE

The following summarised assessment of the standard of AEE provided by the applicants in the examples studies shows that **the adequacy of AEE varied considerably but overall there were some serious shortcomings.** Examples are arranged in order of increasing quantity of information provided.

King Subdivision: Brief assessment but adequate coverage focused on the "land productivity" issue and with proving compliance with criteria and standards of the District Plan. Covered other environmental effects briefly but adequately to show that they were minor. Showed an assessment which is consistent with the scale of the proposal and emphasises the most salient aspects.

Beatrix Bay marine farming: Assessment followed Council guidelines, but was produced to a standard format which provided limited information that was specific to the proposal. In particular, the assessment of ecological (subtidal) effects, and of effects of an additional farm in the area, were superficial. There were some inconsistencies between different sections of the assessment.

The applicant in this case has submitted to the Commissioner that although there were deficiencies in this assessment, its standard was higher than average for marine farming applications at the time. There is concern from not only the Department of Conservation, but also from sections of the marine farming industry, about some allegedly very superficial assessments which are still deemed to be acceptable under the Act. When there is a wide discrepancy in standards among applications being accepted, there is a potential for those applicants and consultants who provide better assessments to be disadvantaged, not only by the higher costs likely to have been incurred in making a more thorough assessment, but also by the possibility that the extra ecological information obtained (e.g. number of species) could constitute grounds for the application to be dedclined.

Clark Subdivision: Assessment for the Plan Change was lengthy, but very much oriented to statutory planning aspects,[8] as is appropriate for this type of application. There was no AEE pursuant to the Fourth Schedule (see below) undertaken for the subsequent subdivision application. The Plan Change AEE appreciated the need for engineering assessment of individual sites in the subdivision application, and this was provided by a local consultant engineer. It appears that AEE was made for the clearance of wilding pines.

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[8] Where a distinction is made in this chapter between 'planning' and 'environmental' aspects, this refers to statutory planning aspects as opposed to more technical, usually bio-physical, environmental assessment aspects.

Underwood logging: Comprehensive AEE by a specialist consultant, based on up-to-date relevant research. Included discussion of suggested conditions, and adherence to Land Disturbance Plan standards. However, concern expressed by DoC, and water quality and channel scour problems alleged by one resident in the 1994-95 summer, suggest that insufficient attention may have been paid to determining the most appropriate width of the riparian strips, and whether proposed water clarity standards could be achieved. The impact of the proposed activity on marine farming were not dealt with in detail.

Blenheim Sewage Plant: Comprehensive assessment of chosen option. However some basic shortcomings were alleged at the hearing, some of which (e.g. effect of increased discharge volumes sought on total quantities of effluent nutrients) had important implications for environmental effects. AEE of alternatives to the chosen scheme was very fragmentary, and this became the main focus of controversy regarding the application. The planning framework was covered rather briefly and omitted consideration of the New Zealand Coastal Policy Statement.[9]

Adequacy of the RMA Fourth Schedule

This was seen by Council and some consultants as a useful starting point, but it is unrealistic to expect that "one size fits all". Some proposed activities, such as many boundary adjustment subdivisions, have few environmental effects, and an AEE which is brief and deals in detail with only a few points may be quite adequate. However for non-routine subdivisions, as in the King subdivision, a full analysis of the economic/land use aspects is necessary to fulfil the requirements of the Fourth Schedule, in particular clauses 1d and 2a (see section 5.2.3 of the main report for further discussion). For other, larger applications, a full and detailed treatment of all aspects in the Fourth Schedule may be necessary. The Council's AEE information sheet states that the Schedule is not exhaustive and implies that all matters listed should be covered.

Having specific guidelines for AEE for different types of applications as described in section 1.6, is a good approach, but such guidelines, once agreed on, should be adhered to, and should provide a guide for whether further information is required from the applicant after the application has been lodged.

Investigation of alternatives

This issue became prominent in the Blenheim Sewage Plant example. Reference to the limited AEE of alternatives was made above. The initial brief to the consultants included investigation of alternatives, as provided by s 92(2)(a) of the RMA, and on this basis the initial setting of the range of options possible was sound (Kingett Mitchell & Associates Ltd and Duffill Watts & Tse Ltd 1993). However the environmental criteria for the consultant's process of refining this range of options down to a "shortlist" of six, and the subsequent recommendation of one, were unclear. Without judging on the soundness of

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[9] Presumably because the applicant argued that the Scheme was sited outside the coastal environment; but this was disputed by several objectors and the Hearings Commissioner. If it was to be argued that the site was beyond the coastal environment, this should have been substantiated in the EEA.

alternative chosen, it appears to the investigation team that the Council's ability to choose between alternatives became very limited, because of the lack of AEE on alternatives to the chosen option, and explicit criteria for choosing between alternatives. For example, members of the Marlborough Environment Centre felt that a critical piece of information for decision-making would be an estimation of the effects of different options on faecal coliform and nutrient levels in the lower Wairau River, but the overview of options prepared by the consultants contained no detail on this subject. Not all objectors felt that alternatives options were necessarily better than the chosen option, merely that neither the Council nor other parties were in a position to know which was best.

It would therefore seem that for major projects, before the final choice of method is made, consideration of alternatives (as set out in s 104(3) and the Fourth Schedule (clause 1b) of the RMA) should also include some AEE of the principal options,[10] in order to allow the best informed decision-making possible. The Parliamentary Commissioner for the Environment has previously advocated such a 'two stage' AEE for major projects.

Summary

This section illustrates the variable quality and significant shortcomings in AEE provided by applicants and their consultants in the examples studied. The shortcomings do not necessarily relate to the amount of information in the assessment or to resources available for the assessment. In some cases discussed with Council staff, the amount of information in applications, even some prepared by consultants, was minimal. The balance between planning and environmental aspects of the AEE is also important. AEE of the examples studied was often dominated by statutory planning issues and in some cases appeared to be little more than an interpretation of planning law such as legal counsel might argue in justification of a proposal.

5.4 Multiple consent requirements

With over 30 categories of resource consent available within the five basic types set out in the RMA, requirements for multiple consents can be confusing to applicants. In the Underwood logging example, five resource consents originally applied for were narrowed down to two, one of which applied to only part of the area. Of the three applications dropped, two relating to dam construction were straightforward cases of activities allowed within a land disturbance resource consent, which could have been easily ascertained by the applicant before application. The third, relating to possible barging activities, was later withdrawn by the applicant. In the Clark subdivision example, the required sequence of applications (a Plan Change following by a subdivision application) seems clear but was possibly not fully understood by the applicants and certainly not by all the submitters.

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[10] Note however that this consideration is not a specific requirement of the Act.

For the subdivision applications the possibility of further resource consents was raised, but not pursued, e.g. water discharge permit for the discharge of stormwater from the Clark subdivision to the sea. This appeared to increase the frustration of the applicant in this example. In other cases the distinction between boundary adjustments and allotment creations can be confusing and appear to need some documented criteria to resolve.

For marine farming applications, the division of responsibilities between Council and the Ministry of Fisheries (formerly the Ministry of Agriculture and Fisheries) is not clearcut. Recent decisions of the Planning Tribunal have affirmed the primacy of the District Council's jurisdiction over space allocation, but the Ministry of Fisheries retains an important responsibility in determining sustainability issues through its permit for the right to harvest various species. The Ministry of Agriculture and Fisheries does not appear to have actively exercised that responsibility in the past.

If the Council's analysis of AEE is to be thorough, there will always be the possibility of changes to the type(s) of consent sought. The only way to avoid unnecessary complications is for good communication between Council and applicant, especially during the early stages of the process.

5.5 Availability of information to interested parties

In the examples studied, it was frequently unclear what, and when, AEE information was made available by the applicant to interested parties. When a application is notified, the council ensures that the application, accompanying AEE, copies of all submissions and the resource planner's report are routinely available to all parties including submitters. However, it appears that when applicants seek approval from interested parties using the Council's standard "green form", (often with a view to the application not being notified and hence not attracting submissions), the full AEE is not always available, even though the interested party acknowledges by signing the form that they have been shown a copy of the AEE. Frequently, a full AEE is not completed until the application is lodged. It is often not practicable to have a full AEE available to affected parties at the time of early consultation. Indeed it is preferable not to have the AEE finalised at this point, so that affected parties' concerns can also be addressed. **However it is reasonable to have a summary of the draft AEE available as a basis of consultation** (perhaps on a form supplied by the Council identifying at least the likely effects and summarising the mitigation measures proposed). Section 6.5 of the main report discusses the question of when formal consent should be given in relation to the time of application and the completion of the AEE.

A further concern raised by some objectors was that additional information gathered on behalf of applicants in support of their application is only available on the day of the hearing, and thus not available for pre-hearing scrutiny (see section 7.3).

6 COUNCIL REVIEW OF ENVIRONMENTAL EFFECTS ASSESSMENT

6.1 Receiving and accepting applications

The Council's process allows for initial checking of applications by the assigned resource planner, before acceptance. If the application is complete and the amount of information supplied in the AEE is judged adequate, the application is *accepted* and the date of acceptance put back to the date of receipt in terms of monitoring processing times. If the information is not adequate, the application is formally *deferred* (by written notification) until acceptable, then the processing time starts.

This is a very fair procedure. The Council does not keep statistics on the number of applications for which further information is formally requested under s 92 of the RMA but staff estimate that more than half of the applications they receive over the counter are deficient. They note that the process of obtaining further information from often unwilling parties can lead to an interpretation that the assessment is council's rather than the applicant's. However in some examples seen by the investigation team, it appeared as though further information had not been requested, even in cases where the level of information in the AEE was felt to be inadequate (section 5.3).

The adequacy of information supplied by applicants has been of concern to several interested parties, notably to the Department of Conservation with respect to marine farming applications. In 1994 the Hearings Committee nullified several applications because "supporting material did not satisfy requirements of s 88(4) and the Fourth Schedule and therefore the public could not adequately assess the effects of the application based on the information supplied." These decisions have implications for staff in terms of information criteria for accepting applications. More recently the Hearings Committee has ruled, concerning an application by DoC for adjournment to consider additional evidence submitted on the day of the hearing, that if staff have accepted and notified an application it would not subsequently be deferred. This puts an even greater onus on staff to ensure that information supplied as part of the application is complete and adequate.

6.2 Notification

Although the issue of notification of consent applications does not appear to have been particularly controversial in Marlborough, specific criteria for notification seem to be unclear. From the provisions of s 94 , the main exercise of judgement is whether the effects of the proposed activity are minor. Criteria for assessing this are needed. At present the decision seems to be somewhat arbitrary, and is delegated down to a relatively low level (Senior Consents Officer). This system resulted in confusion and distress to the applicants in the King subdivision case. Neither the reasons for the original decision to notify this application, nor the reasons for reversal of that decision, were documented on file.

In the Underwood logging example, the applicant had hoped to avoid notification and had gone to a lot of trouble to try and get approval from every affected party (approximately 80). This was commendable, irrespective of whether the application was

to be notified or not, and was perhaps a reason for the relatively few objections to the final application. However, in terms of significant effects, the application clearly had to be notified, regardless of whether approval from affected parties had been obtained. This should have been made clear to the applicant in very early (pre-application) discussions.

It is not completely clear why applicants in both the above cases wanted to avoid notification although the costs incurred in a notified application can be substantially higher. In both cases the extra time taken by the notification process was or would have been quite small. It is possible that a fear of the public process is also involved. It seems that the reasons and possible benefits of notification (e.g. openness, opportunity for submissions of support, etc) should be more clearly explained to applicants. It should also be noted that the RMA starts with the presumption that every application is notified (s 93), and then addresses situations where non-notification can occur (s 94).

6.3 Adequacy of Council review

Procedures for staff review of AEE information supplied by applicants are well established and satisfactory. The written review provided by staff for the Hearings Committee or Commissioner usually follows a standard format covering: planning instruments; statutory framework; listing and summary of submissions; evaluation; conclusion, which may include a recommended decision; and recommended conditions.

The discussion of statutory framework and planning instruments was comprehensive and fair in all the examples studied. The good quality of this aspect of the review reflects the planning expertise of most of the resource planning staff. The summary of submissions was generally adequate in the examples studied. In one example, one submission was not noted, which omission required a waiver under s 37 to rectify. The evaluation section of the review is covered in more detail by the following notes on examples.

King subdivision: Adequate; covered main s 104 requirements fairly. Emphasis on planning issues justified by nature of application. Considered cumulative effects although it did not look at the application in the light of adjacent blocks smaller than 10ha. Went to some trouble to analyse the 1990 Planning Tribunal decision on the Kings' previous application, seeking specific legal opinion on its application to the present case. A site visit appeared to have been made only as a result of the dispute over notification. The criteria for differentiation between boundary adjustments and allotment creations were not clear.

Beatrix Bay marine farming: Reasonably comprehensive in terms of s 104 requirements but with little technical content, and somewhat uncritical of a poor AEE submitted by applicants. Consideration of technical matters was based heavily on the AEE and did not query the conclusions of the AEE. Noted that the applicant did not indicate whether on-shore facilities would be required, a critical component in terms of environmental effects, but there was no further reference to this deficiency. Concluded that the proposal would not "adversely affect water quality to a significantly adverse degree" but does not back up this conclusion (this aspect was not addressed at all in the AEE). Lacked analysis of cumulative impacts (see below). Did not indicate whether a field inspection took place.

Clarks subdivision: A good evaluation of the Plan Change application: clear and at the right level of detail. Emphasised the planning aspects but noted that more detailed engineering assessment would be required for the subdivision application.

The subdivision application received a very superficial evaluation. As a controlled activity, the application included an engineering report rather than a separate AEE. The evaluation of this information seems to have been dealt with exclusively by way of proposed conditions, without stating their technical basis in the engineering report. The inadequacy of this approach was shown by the Hearings Committee's substantial redraft of conditions, and subsequent negotiation of a Memorandum of Consent to the Planning Tribunal. Neither evaluation referred to a geotechnical investigation of the area, including detailed maps of the hazard zonation and development suitability, which had been prepared with the support of the previous council (Horray 1989).

Underwood logging: Generally comprehensive, appropriate to the nature and scale of the proposed activity. Files showed an effective dialogue between applicant and staff soil conservator on various aspects of the application and proposed conditions. A concern expressed by DoC with the proposed width of the riparian strip was not addressed in the evaluation. Potential effects on water quality were not discussed in detail.

Blenheim Sewage Treatment Plant: Somewhat superficial given the scale of the proposed project and its AEE. Contained useful technical information, but not as well organised as most other evaluations and consisted mainly of a list of concerns which may have needed addressing by way of conditions. Did not assess the quality of the proposed discharge, nor pick up the important point raised at the hearing that the increased volume of discharge meant that total amount of discharged nutrients was relatively high.

One aspect commented on fully was that of alternatives to the proposed option, to the extent that environmental effects of possible alternatives were assessed more thoroughly than those of the chosen option. Such emphasis was inappropriate in this evaluation and would have been more appropriate in the AEE itself.

Other subdivision issues

An issue that needs some comment concerns esplanade reserve provisions for subdivision applications, on which DoC or conservation groups such as the Fish and Game Council have an interest. In the transition pending development of new district plans and for allotments of less than 4 hectares, the Council can waive or reduce an esplanade reserve with the consent of the Minister of Conservation. DoC, as the Minister's representative, responds to these waiver or reduction applications. This response occurs after the resource consent process and effectively curtails DoC's input on esplanade matters at the earlier resource consent stage of the subdivision application.

Before seeking the Minister's approval, Council staff must assess whether public access or conservation values will be affected by the application, and therefore whether a reduction or waiver is justified. There may at times be an incentive to the Council to conclude that a waiver or reduction application be granted as in most cases esplanade reserves are vested in the council who therefore inherit a subsequent management responsibility. If this judgement is then disputed at the time of notification by DoC or

any other party, this sets up 'instant conflict' between the applicant (who has been advised of the council's decision) and the objecting party, whereas if there had been consultation before the judgement was made, this conflict might have been avoidable. The essential point is that the advice of council staff should be based on a careful analysis of ecological and public access aspects in the AEE, and it seems reasonable that this should at times involve consultation with DoC or other interested parties such as the Fish and Game Council.

Summary

From the above notes, the Commissioner concludes that there were arguably shortcomings in all the examples studied, mainly in the treatment of technical information for larger, more complex applications. The overall quality of this aspect of the Council's evaluation of AEE must be questioned. Applicants, submitters and other agencies have commented expensively on this aspect to the investigation team. At best the quality of evaluation means it is difficult for decision makers to be consistent. At worst it has the potential to lead to significantly deficient decision-making.

The critical comments made in the above section are not a reflection on the professionalism and integrity of planning staff. Individually they are well-qualified and, as far as could be assessed by the investigation team, motivated and diligent. The problems that have been noted concern the technical expertise and experience of the group as a whole, the resources available for them to do their job, and the quality control of their evaluations.

The full evaluation of AEE information provided by applicants is one of the most critical aspects of the entire resource consent process. It is the responsibility of the applicant to provide a full assessment of the proposed activity, but this responsibility is meaningless unless the Council provides guidance and, where necessary, firm judgements on the adequacy of this assessment. Good evaluations by the Council should, cumulatively, improve the guidance available to applicants and consultants and result in better environmental assessment in applications.

6.4 Evaluation of cumulative effects

The above section paid special attention to the evaluation of cumulative effects of proposals in the examples studied. This is a specialised and critical area (see main report, section 5.2.4) which should be given great care in the evaluation of AEE information. The effect of one proposed activity in relation to other activities cannot always be adequately assessed by any one applicant, and it is important to distinguish between site specific assessments and assessment of cumulative effects. Applicants are clearly required under s 88 and the Fourth Schedule to undertake an AEE in terms of their specific application, but responsibility for broader cumulative effects assessment and moinitoring is not clear, and has tended to be neglected in the past. This level of assessment should be attempted in the council's evaluation; it is made much easier for individual consent applications if regional and district Plans lay down a framework and some "bottom lines", including rules and/or zones if appropriate, for activities which impinge on critical regional management issues. It may sometimes be appropriate for

resource inventory and research which is required to underpin such a framework to be obtained at public cost by national research and survey agencies.

For Marlborough District Council this is especially critical for marine farming applications. Arguments in submitted environmental assessments that amount to "there are already many marine farms; one more won't make any difference" need to be assessed very carefully to establish where the limits to sustainable management should be set. Such evaluation applies to many important effects of marine farms, both ecological and non-ecological, for example nutrient depletion, ecological impacts, effects on scenic and recreation values, and navigational hazard.

Recent Planning Tribunal decisions[11] and a scientific review prepared in support of recent applications by Sanford South Island (Forrest 1995) have clarified many issues, and value judgements will always be required for such factors as scenic and recreation effects, but much basic information for evaluation is still lacking. For example the Sanford report (Forrest 1995) notes:

> "A major research effort would be required to predict an upper limit for the number lines in any one area that would not result in a cumulative food shortage, and would not affect natural populations of filter feeders."

Regarding ecological effects, the Department of Conservation has documented what it considers insufficient information provided in many AEE sections of marine farming applications and is currently assisting the Council in drawing up a guideline for ecological effects assessment. Preparation of the guideline has also involved consultation with NIWA and the Cawthron Institute. The draft guideline principally provides advice on recommended sampling methods and reporting standards. The guideline recommends a two-level approach to sampling, whereby the findings of an initial investigative study (qualitative or descriptive information about the proposed site or activity) determines the need for a more detailed assessment. This approach is consistent with the Sanford report (Forrest 1995) which provides a framework for initial assessment of site suitability in terms of site characterisation results.

Evaluation of cumulative effects is also critical in many subdivision issues, exemplified by the King example, where the direct environmental effects of a single application are small but it may be much more significant as a precedent in creating a significant cumulative effect on land use, infrastructure requirements or other factors. Similar arguments may also apply to other larger subdivisions; some of the objectors to the Clark subdivision example seemed to be as much concerned with the cumulative effects of later possible subdivisions than with the proposed subdivision itself.

6.5 Relationship with other Council departments and outside authorities

This seems to be generally satisfactory. It was noticeable that at the Blenheim Sewage Plant hearing, RMR staff had a very low profile and gave very little evidence. However RMR staff seem to be open to considering outside information. In the Blenheim Sewage

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[11] notably *Thomas v Marlborough District Council,* W16/95, 21 February 1995, Judge Willy)

Plant example, RMR staff maintained a balance between good communication with the Works and Services Department, and the distance necessary to exercise its regulatory function. In applications by the Council, it will always be important to maintain that balance. It would seem that the RMR Department's relationship with the Department of Conservation, which has been critical at times of the work done by the former, has been uneasy at times, but constructive dialogue has been maintained.

6.6 AEE in relation to planning

Several examples show the great difficulty of carrying out resource consent functions consistently in the absence of district and regional plans prepared under the RMA. In both the Clark subdivision and marine farming cases, there would have been much greater certainty with a Plan of the type envisaged for the Marlborough Sounds Resource Management Plan, under the Regional Policy Statement, including the identification of some areas where activities will not generally be permitted, and the establishment of rules to ensure sustainable management. In the Clark subdivision, several objectors felt that no subdivisions should be permitted in the area until a new plan was in place.

In the King subdivision and Blenheim Sewage Plant cases, similar comments could be made with regard to the Wairau/Awatere Resource Management Plan. Evaluation of the effects of a subdivision proposal against a benchmark of any given minimum subdivision area is very difficult when, for economic reasons, this benchmark can change significantly over time. It is recognised that subdivision applications such as the King's often raise very difficult planning issues. In the Underwood logging example, the proposed activity straddled two Sections of the District Plan with different land use policies, requiring a land use consent to be applied for only part of the area.

An additional problem, raised by iwi representatives, is that the Transitional Plans now operating do not refer to the Treaty of Waitangi. It would be appropriate to address many of the concerns of tangata whenua (see section 8.2) in forthcoming regional management plans.

At present the Council has in place a Wairau Plains Water Allocation Plan and a Land Disturbance Plan prepared under the Resource Management Act. The Council also has two District Plans, which will also be Regional Management Plans and Regional Coastal Plans, in preparation. The Marlborough Sounds Regional plan was notified on 31 July 1995 and the Wairau/Awatere Plan is due to be notified in the second half of 199

Strategic planning and resource consent processes should proceed closely together, even if their functions are somewhat separated. This alignment of activities should present minimal difficulties within a Unitary Authority. In addition, the resource consent database would be very valuable for strategic planning.

7 THE DECISION-MAKING PROCESS

7.1 Balancing development and environmental protection

A number of allegations were made to the investigation team, principally by iwi and environment and conservation groups, that the Council was determinedly "pro-development", to the detriment of environmental concerns. Many territorial authorities in the country are perceived to be similarly "pro-development", but environmental groups perceive more risk with this situation within a Unitary Authority because the checks and balances provided by a separate regional council are perceived not to be present.

Environmental groups, such as the Marlborough Environment Centre, place strong emphasis on the Precautionary Principle to underlie any development and cite Principle 3.3.1 of the Proposed Marlborough Regional Policy Statement: "Incorporate into resource management policy and plans the concepts within Agenda 21 relevant to the sustainable management of natural and physical resources". The groups have alleged that Council's decision-making has not sufficiently incorporated the Precautionary Principle, nor has it paid sufficient heed to Part II of the Resource Management Act.

The Mayor, Council managers, and consultants have all confirmed to the investigation team the important role the Council has had in fostering significant economic development and diversification in the region that has occurred in the last two decades. Several principles and objectives in the Regional Policy Statement refer to use, development and economic well-being. However these statements are all balanced by reference to environmental protection, and **the Commissioner believes that Council structures are well set up to achieve that balance. In general, from the examples studied, the Commissioner believes that Council's decision-making on resource consents has been of a high standard, and reflects a genuine concern to balance development and environmental protection.** In these examples, the Commissioner believes that there has been generally a precautionary approach adopted, particularly as reflected in the conditions of consent. It should also be pointed out that it is often hard for individual decisions reached under a Transitional Plan prepared under a different framework to reflect the precautionary principle, and Part II of the RMA. **Until the new plans are prepared, ensuring the completeness of AEE for all applications is the best means for protection of the environment.**

Environmental groups that have been highly critical of aspects of the Council's performance as discussed elsewhere, have also specifically praised the Council for some aspects of its environmental management, for example, structures for consultation with Maori, selection of new landfill sites, a responsible attitude to its own use of herbicides, a precautionary approach to water allocation planning which reflects principles of cumulative effects assessment discussed in section 6.4.

New councillors and hearings commissioners require time to learn about their changed role under the Resource Management Act and to develop an appropriate balance in practice among use, development, and protection of resources. Councillors with previous experience have also had to come to grips with a new decision-making environment, which is more "hands-on" for decision-makers and has less reliance on staff recommendations. Managers are attempting to remove any perceptions of officers prejudging decisions, by encouraging them to end their evaluation of applications with a

conclusion rather than a firm recommendation on whether the consent should be granted. However staff are instructed to make recommendations on conditions of any consents granted.

7.2 Delegation of decision-making

There is extensive use of the power of delegation to facilitate decision-making. A very detailed Instrument of Delegation for this purpose specifies eight levels of delegation in hierarchy and nearly 80 types of decision. This helps the resource consent process generally because of the volume of consents that require attention. At present the Hearings Committee meets two or three times weekly (all notified and some non-notified applications), and a second Hearings Committee has been recently convened to hear some outstanding applications. The Chairman has delegated authority over controlled activities but does not always exercise it. Staff have no delegated authority for final determinations (granting or refusing consent), except for determinations on applications for controlled activity subdivisions.

The use of Commissioners appears to have been very successful in achieving independence of decision-making when conflicts of interest are possible. The use of Hearings Commissioners is more expensive than relying exclusively on Councillors, but its success suggests it is money well spent. Commissioners' decisions appear to have drawn little criticism, apart from some concerns from iwi that they failed to recognise Maori values. However this criticism has been made of all levels of decision-making. The Council is well aware that to continue successfully it will need to maintain a pool of well-qualified Commissioners who have legal and technical expertise and are also aware of the social, cultural and economic dimensions of decision-making. Some cases may require legal, technical or tangata whenua assistance to complement the expertise of Commissioners.

7.3 The hearings process

A number of concerns were expressed about the hearings process. A number of people appearing at the hearings, usually objectors, felt that the atmosphere was confrontational and intimidating to lay people, and a number have stated to the investigation team that "they would not go through the experience again." These comments applied especially to the Clark subdivision case, where both sides claimed that the process was stacked in favour of the other. More generally, iwi have expressed doubts that pakeha decision-makers take seriously, and can weigh up, all concerns including those of Maori.

More specific concerns included the following:

1. Who are affected parties: are they simply the immediate neighbours? Some people in the vicinity of the Clarks' subdivision and the Underwood logging application were concerned because of precedent value; they believed that they were more likely to be directly affected by later applications.

2. What evidence is admitted, specifically evidence from lay people? There were several allegations that expert evidence is given too much weight compared to that of affected people. A grey area occurs when lay people go beyond the area of

"submission" and systematically collect evidence or acquire expertise in support of their submission.

3. What constitutes "new" evidence in terms of requirements to be available before the hearing or in terms of the applicant's right of reply at the hearing? Several affected parties expressed frustration about new information submitted on the day of a hearing, which they had not had time to evaluate.

4. Whether evidence could be read as opposed to simply tabled.

There appears to be considerable confusion about the legal status of a resource consent hearing, especially amongst lay objectors to an application. Clearly, the resource consent hearing is a quasi-judicial process, and councils have a reasonable expectation that the evidence heard should be of a standard to withstand Planning Tribunal scrutiny. Subject to the rules of natural justice, councils have fairly wide jurisdiction as to the procedures they may adopt at hearings, and in the case of Marlborough District Council these are described in a written set of guidelines for hearings. Councillors agree that their hearings process is relatively formal but argue that in a situation where the time resources of the Committee are stretched to the limit, such formality is necessary for the efficient use of their time. Furthermore they point out that the volume of work means that they have become experienced at quickly judging the potential relevance of submitted evidence, and thus it is not necessary for example to have all tabled evidence read aloud. Not all lay people interviewed found the hearings process intimidating.

The fear that some parties nevertheless appear to have fears of the hearings process is a further argument in favour of more frequent use of less formal pre-hearing meetings (section 8.3). However, it may also be possible to make hearings more "user friendly", especially for inexperienced lay people. A relevant comment made to the investigation team was "if people are going to participate they have to feel at ease". Councils have wide discretion as to the form and tone of a hearing, and relative informality need not be at the expense of efficiency. Furthermore it may be possible for people appearing at hearings to be given prior information on the nature and process of the hearing and on what evidence will and will not be heard (e.g. a layperson's summary of the relevant parts of the guidelines for hearings). In some of the examples studied, it appears that concerns by objectors about the hearings process may have obscured for them the extent to which their concerns about the proposed activity were actually taken into account in the consent decision. It is inevitable that styles amongst Hearings Committee Councillors and Hearings Commissioners will vary, but the rules of natural justice which apply to the hearing, and a careful consideration of all submitted evidence, including the AEE, should ensure that a hearing outcome is not solely dependant on the strength of argument and demeanour of the parties on the day of a hearing.

7.4 Site inspections

Several people spoke of the need for decision-makers to see the site of proposed developments before making their decision on consent applications. Staff attempt to inspect all application sites if at all possible, usually jointly with the Harbourmaster, but there have been occasions when a visit has not been possible. Present Council policy is for the Hearings Committee to inspect sites "when it considers this is appropriate". Site

visits for all applications would be too expensive and time-consuming to justify, committee members pointing out in particular that they cannot justify the expense of helicopter hire which would be necessary for visiting many remote sites in the District. However it may sometimes for Committee members to have recommendation from staff that a site inspection would be useful for their decision-making. Also, it would be very useful to have periodic tours of a selection of sites whose applications are current. As well as the direct benefits of Hearings Committee inspections for decision-making, this would over time enable the Hearings Committee, and other interested council members to build up comprehensive field knowledge. It may incidentally allow the occasional inspection by iwi of some remote sites where they have been asked to consent to an application, identify waahi tapu sites etc, but which they do not have the resources to visit (section 8.4).

8 RESOLUTION OF CONFLICT

8.1 Consultation with affected parties

The success of consultation processes, both by applicants and the Council itself, appears to be variable. In some of the examples studied, large numbers of potentially affected parties have been approached for permission, but substantive *consultation* (in the sense discussed in recent Planning Tribunal determinations; see section 6.1 in the main report) and discussion of concerns has not been very evident. For example, in the Clark subdivision case, the Clarks felt that they had made genuine attempts to meet concerns of residents but been rebuffed by both residents and Council. They had difficulties in dealing with multiple objectors who had both common and individual concerns, but were largely without legal counsel (see also section 8.3). Some objectors are still very unhappy about the subdivision taking place and feel that the whole process has been a waste of time.

Looking at the Council's own consultation processes, in the Blenheim Sewage Plant example, the 1992 resource consent specified who should be consulted. This prescription was closely followed (as detailed in AEE report) but the Council was still criticised by objectors who felt their concerns had not been taken into account. Most problems identified by objectors were about consideration of alternative options. As discussed in section 5.3 there was very little AEE of alternative options, and therefore it appears that consultation about alternatives was bound to fail no matter how much was done.

In general, Council appears to find consultation onerous and difficult and is consequently having difficulty advising applicants. The issue is not so much **who** to consult in a general sense. A good practice of the Council is their maintaining a list of some 50 groups, including iwi, industry, residents, recreational and environmental groups, which staff check for every application to identify who may need to be consulted. One apparent gap on this list is the lack of any local environmental groups, e.g. the local branch of the Royal Forest and Bird Protection Society and the Marlborough Environment Centre.

Once the groups or individuals with whom consultation should take place have been identified, the question of **how** this consultation should best proceed becomes paramount. There are no easy answers (but see chapter 6 of the main report for further discussion). For its own consultation, council needs to be clear about the objectives and parameters of the consultation in each case, and have reasonable agreement about these, and then set up specific processes to achieve those objectives efficiently and within agreed timeframes.

8.2 Consideration of resources valued by tangata whenua

Iwi acknowledge that the Council has made an effort to establish Maori input to resource management structures and to consult with Maori. What appears to be still of concern is the less tangible matter of appreciation of Maori values within Council processes and decisions, using what has been alleged to be a narrow interpretation of ss 104 and 105 of the RMA. Iwi representatives have themselves pointed out that such judgements are made in the context of rising Maori expectations of participation in resource management through the Resource Management Act and other recent legislation.

A recent Planning Tribunal judgement, *Aqua King v. Marlborough District Council,* (W19/95, 28 March 1995, Judge Kenderdine) has illuminated the extent of consultation with iwi required:

> "Councils can require applicants to consult further with iwi where a proposal **may** have significant adverse effects" (Brookers RMG 1995:46)

This judgement may have implications for comments such as that made by the applicant's consultant in the AEE accompanying the Beatrix Bay marine farming application that "....[the Ngati Kuia representative] was concerned with the allocation of **all** [our emphasis] remaining suitable areas for marine farming, without just consideration for iwi requirements" (the iwi later supplied written approval for this application).

Regarding waahi tapu, there was concern expressed that too much emphasis was placed on the New Zealand Historic Places Trust register of archaeological sites, and that this register is far from complete. However iwi do not have enough resources to visit each application site to check for the presence of waahi tapu. It is common practice for consent conditions for applications involving land disturbance to include a requirement that if any waahi tapu sites are unearthed the work should stop immediately and iwi authorities advised forthwith. Most iwi are reluctant to reveal the specific locations of waahi tapu. Te Atiawa were prepared to have areas of interest to them specified in the forthcoming Regional Coastal Plan, as specified in s 62(1) of the RMA; but representatives claimed that council planners were not interested in this approach, suggesting instead that these places be identified in Te Atiawa's own management plan.

8.3 Use of pre-hearing meetings

Pre-hearing meetings as described in s 99 of the RMA have not been much used in Marlborough District Council resource consent procedures, except in the Blenheim Sewage Plant example where the Hearings Commissioner found they were useful for setting conditions. In the Clark subdivisions and scheme change example, numerous informal meetings between the applicants and objecting residents took place, but it appears that these meetings were not well focused, were taking place over a long period of time and not helped by the very complex planning environment, so probably were ultimately not very helpful. In consequence, the Clarks' lawyer advised against a "public" pre-hearing meeting for the specific subdivision application discussed in 4.4. The use of an independent facilitator may have been particularly helpful in this case.

Council staff feel that pre-hearing meetings can be counter-productive and merely harden feelings. Also they see that opponents usually do not want to lose their right of appeal by agreeing to conditions before the hearing (which need not be a consequence of the statutory pre-hearing process). However, environmental and conservation groups spoken to generally welcomed the use of various types of informal meetings, seeing them as an effective way of making an input in a relatively non-confrontational setting.

If pre-hearing meetings are to be useful, it seems essential to have them carefully set up, with reasonable agreement by all parties as to agenda and objectives, to have very skilled and independent facilitation (which may or may not appropriately come from Council staff, depending on the circumstances), and to have full access to information.

8.4 Resourcing of submitters

Environmental groups and iwi expressed serious concerns to the investigation team that they lack financial resources to effectively take part in resource consent process. Both groups affirmed the importance of their role, the former as guardians of the public interest, the latter as a Treaty of Waitangi partner, and both groups as expert sources of information. This was probably the most serious concern encountered in discussions with tangata whenua. Both groups identified a serious "submission overload"; also when the process is adversarial, legal representation is important and the cost of this exacerbates the financial difficulties.

The Council appears sympathetic to the iwi case for resourcing to enable it to participate in resource planning, but does not see such resourcing as primarily a Council responsibility. It has raised the matter on several occasions with Government and the Local Government Association. The Council has included the Marlborough Environmental Centre in several rounds of consultation but does not see the Centre as necessarily representing widespread community concerns. Council does not believe that it has a role in resourcing environmental groups of this type.

Recently the Council has implemented a policy of partial recovery of costs of copying and posting notified applications. This policy does not apply to organisations that the Council is required to notify by statute. The council has exercised discretion in choosing which organisations are affected by this policy; this is appropriate as it is important that any such policy does not disadvantage public interest organisations wishing to participate in environmental management in the region through the resource consent process.

9 MITIGATION AND MONITORING OF ENVIRONMENTAL EFFECTS

9.1 Importance of conditions

Conditions on resource consents are a vital means of mitigating adverse effects and addressing the concerns of affected parties. In the case of a controlled or permitted activity, conditions are the only means of achieving these purposes in specific cases. In all the cases described in this chapter, conditions were an important focus of the hearing and decision, and in some cases the most important aspect. Marlborough District Council planners are encouraged to think about potential conditions on consents from the beginning of their involvement.

Not all conditions are specific to individual resource consents. Many are included in plans or environmental standards attached to plans. For permitted activities, such conditions are the only means of mitigating effects of activities on the environment, while for controlled or discretionary activities councils have the opportunity to design conditions that reflect the specifics of the case.

Both for plans and individual consents there always needs to be a balance attempted between conditions that are specific enough to address concerns meaningfully, and flexible enough to be practicable and allow for individual circumstances. For example, during the development of the Land Disturbance Plan in Marlborough there was considerable debate over whether desired culvert spacing should be specified in the Plan or included with the accompanying Environmental Standards which only have the status of guidelines, but which can if necessary by specifically referred to in individual consents.

Whatever types of conditions are imposed, they can only be effective if they are enforceable and enforced and if the effects of the consented activity on the environment are monitored.

9.2 Relating conditions to identified concerns

Designing consent conditions involves, in part, balancing the environmental issues raised by the AEE with the requirements for sustainable management under the RMA on the one hand and the concerns of affected parties, especially neighbours, who are not necessarily concerned with sustainable management, on the other. This is no easy matter: the two above sets of interests do not always coincide e.g. siting of landfills, industrial sites, etc. To balance these various requirements well requires a very thorough and accurate AEE. In the Clark subdivision, there was little detailed AEE of the individual subdivision proposals. Based on this deficient information, the resource planner's recommendations did not adequately address residents' concerns, as evidenced by the imposition of a large number of new and/or tougher conditions by the Committee. These changes also represented an unexpected setback for the applicants who subsequently appealed the decision to the Tribunal. However the changed conditions were eventually agreed to by means of a Memorandum of Consent to the Planning Tribunal, with only relatively minor changes.

In the Parliamentary Commissioner's opinion, the decisions reached regarding conditions in the examples studied were generally a very fair response to most of the identified concerns. This was best exemplified by the conditions imposed for the Blenheim Sewage Plant discharge permit (and largely agreed to in pre-hearing meetings between the parties). On some occasions, the conditions of permits, such for the Beatrix Bay marine farm, **cannot** meet identified concerns, in that the principal concern was the effect on values of the adjacent scenic reserve, which could have only been met by refusal of the application.

The present relationship between commercial forestry operators and marine farmers appears to be generally very good. This is pleasing because the relationship is potentially tense due to the sensitivity of the near-shore marine environment to sediment that can be produced during forestry operations. The present good relationship appears to be largely due to success in relating conditions to identified concerns in the Land Disturbance Plan, such as the emphasis on water clarity standards, and by efforts from the majority of forest operators to adhere to those standards. This has resulted in marine farming interests often not objecting to adjacent forestry land disturbance applications, as shown in the Underwood logging example.

9.3 Duration of consents

The duration of the consent is a critical factor in decisions on many types of resource consents. This became an important focus of the Blenheim Sewage Plant hearing, and one which, in the opinion of the hearings Commissioner, was the only condition on which there was a significant difference remaining between applicant and objectors on which he was required to decide. It was also important in the Underwood logging application, where consent was originally sought for 45 years, to cover almost a full Douglas fir rotation. In this instance consent was granted for 11 years. Marine farming applications are commonly for 35 years, but have recently been granted for 10 years in some areas of changing resource use.

As a general rule, it would seem that the longer the duration of consent sought, the more detailed and less subject to uncertainty the AEE needs to be. In the case of marine farming, where the applicant seeks to alienate and modify **public** space for a long period of time, the required standard of environmental assessment should be especially high.

9.4 Monitoring programmes as conditions on consents

The point has been made that conditions on resource consents cannot be enforced unless they are monitored. A number of recent consent decisions have specified monitoring programmes on the effects of the consented activity, as a condition of the consent. The specified monitoring may be either carried out by the applicant under Council review, or jointly by the applicant and Council. This arrangement is in many circumstances more efficient and equitable than liability of an applicant for the costs of monitoring by the Council.

These are useful developments which provide for the information necessary to ensure that the resource consents procedures are working effectively, and also give certainty to

all parties. Furthermore the database generated by the resultant monitoring results could be an important source of information for future plan preparation or other resource analysis.

9.5 Carrying out monitoring and enforcing conditions

From 1 July 1994 all resource consents granted by Council were to be monitored for compliance with conditions. Subsequently Council has appointed one compliance monitoring officer, and is advertising for a second one, to work within the Resource Analysis Section of the RMR Department. The Council is also establishing a data base for tracking the monitoring of conditions on all consents. These are all useful developments because lack of monitoring and enforcing of conditions was one of the major areas of criticism encountered during this investigation.

Many allegations were made to the investigation team about poor performance in carrying out consented activities, resulting in conditions not being met. Compliance monitoring was felt to be largely complaints driven. For example, in the Underwood logging case, one neighbour has claimed to the Commissioner that land disturbance activities over the 1994-5 summer period had caused channel erosion and siltation to a degree which appeared to have breached the conditions of the resource consent, but that approaches to both the forest owner and the Council had not resolved the situation. Council staff commented in this instance that the concern was one about possible outcomes rather than an actual problem. While detailed examination of these allegations was outside the scope of the present investigation, it would appear that strengthening of compliance monitoring will be an important priority for the Council, as this aspect of the resource consents system is crucial for public confidence in the system as a whole.

9 SUMMARY OF KEY FINDINGS

Good Practice

1. The Marlborough District Council has responded well to the challenge of addressing environmental effects issues as required by the RMA when reporting on and considering resource consent applications. AEE information contained in staff reports on applications is effectively used by Council decision-makers in reaching decisions, and reasons based on the AEE are given for decisions.

2. Excellent written background information and guidance on AEE is provided with resource consent application forms, in particular guidance on AEE preparation which is specific to different types of applications.

3. The Council has a good policy of encouraging specific advice to applicants, including that provided prior to application, to be made in writing wherever possible. A related good practice is the establishment of a pre-application file for recording details of early contacts between the applicant and council staff, information on this file being added to the main file established after the application is received.

4. Council staff freely offer advice on whom applicants should consult as affected parties, and maintain a list of private and public organisations likely to have an interest in particular types of applications. There is an efficient process for the identification of the relevant iwi with whom applicants should consult.

5. Transparent separation of regulatory and operational functions occurs. A code of practice guides procedures for consent applications made by council departments.

6. A consistent format, which is appropriate to the requirements of the Fourth Schedule of the RMA, is used for council staff reports.

7. The Council is dealing very responsibly with the difficult new area of applications for coastal permits for marine farming. In particular, the Council is taking a precautionary approach to notification of applications and recognition of public interest aspects of applications, and staff are making good progress, in conjunction with the Department of Conservation, in developing a guideline for ecological assessments of proposed marine farming areas.

8. The Council makes extensive and particularly successful use of Hearings Commissioners. A code of practice guides the appointment and use of Hearings Commissioners.

9. Council has responded to a very heavy and varied workload for staff and decision-makers by increasing the numbers of resource planners, by efficient hearings procedures and by extensive use of delegated powers guided by a detailed written instrument of delegation.

10. Council decisions on conditions to be placed on resource consents granted appear to be a very fair response to most identified concerns where possible. In addition, Council has recognised the importance of monitoring and enforcing compliance with conditions of consent, by requiring that all consent granted are to be monitored for compliance with conditions, by establishing a database to track the monitoring of conditions, and by appointing staff with designated functions of monitoring and enforcing conditions.

11. Where appropriate, conditions of consent include a specified monitoring programme with costs and responsibilities apportioned between parties.

Recommendations for improvement

1. The adequacy of AEE information supplied by applicants in the examples studied was of variable quality and there were significant shortcomings identified. There is an important onus on staff to ensure that information supplied with information is complete and adequate.

   If insufficient information has been given in the applicant's AEE to enable the application to be adequately reviewed, extra information should be requested from the applicant under s 92 of the RMA, and such requests are documented to aid the monitoring of adequacy of information supplied by applicants.

2. Although the issue of whether or not particular consent applications should be notified does not appear to have been particularly controversial in Marlborough, and the Council has taken a precautionary attitude towards notification, specific criteria for non-notification seemed to be unclear.

   Council should develop criteria on what constitutes "minor adverse effects", to aid the decision on whether or not to notify applications.

3. In the examples studied, it was frequently unclear what, and when, AEE information was made available by the applicant to interested parties, and it appears that when applicants seek approval from interested parties using the Council's standard "green form", the full AEE is not always available.

   Council should ensure that the forms available for affected parties to approve applications: make clear the legal implications of signing; make clear the right of the affected party to withdraw consent; include a summary of the AEE, and have a place to note whether the signing party has sighted the full and final proposal including plans and the finalised AEE.

4. Although the Council's resource planners are individually well-qualified, motivated and diligent, there were arguably shortcomings in the evaluation of applicants' EEA in all the examples studied, mainly in the treatment of technical information for larger, more complex applications. It is the responsibility of the applicant to

provide a full assessment of the proposed activity, but this responsibility is meaningless unless the Council, where necessary, provides firm judgements on the adequacy of this assessment.

Council should use independent technical expertise for the review of an AEE where such expertise is not available on staff. Currently in Marlborough the volume of complex applications, especially those involving marine farming, is such that the retention of a technical consultant should be carefully considered. Staff reports on applications should state clearly whether a site visit has been made, and where it is considered that a further site inspection by decision-makers would aid the decision this should also be clearly recommended. Quality control and/or peer review of all staff reports should take place before their submission to Council management or Hearings Committee, and full use is made of available training and "refresher course" opportunities for staff in the area of preparation and review of AEE.

5. Although the Council's hearings procedures are efficient and fair, it may also be possible to make hearings more "user friendly", especially for inexperienced lay people not regularly appearing. Pre-hearing meetings have not been much used in Marlborough District Council's resource consent procedures.

Council should consider making more use of well-organised and carefully facilitated pre-hearing meetings in order to help clarify environmental effects information and mitigation measures and resolve conflicts in a relatively informal atmosphere. The council should also ensure that written guidance on hearings procedure and practice is available to all participants at hearings prior to the day of the hearing.

PERSONS CONSULTED IN THE PREPARATION OF THIS CASE STUDY

Listed are people who provided information to the investigation, either by providing further contacts (noted by (c)), providing information by telephone (t), providing written information (w), or by face-to-face interview (all others). Others were invited to participate but chose not to be involved.
* denotes people or organisations who commented on the draft report.

* Marlborough District Council

Mr L F McKendry, Mayor
Cr M G Briggs, Chairman, Resource Management and Regulatory Committee
Cr R G Winter, Chairman, Hearings Committee
Cr E I Davidson, Hearings Committee
Cr S Wadsworth, Hearings Committee
Mr W J D Olliver, Resource Management and Regulatory Manager
Mr L J Dovey, Works and Services Manager
Mr Neil Morris, District Planner
Ms Linda Craighead, Senior Resource Planner
Mr Fraser McRae, Senior Strategic Planner
Ms Jenny McAvinue, Resource Planner
Ms Linda Neame, Resource Monitoring Officer
Ms Pamela Walker, Resource Planner (t)
Mr R D Sutherland, Hearings Commissioner

Government Departments

Ms Jacky Challis, Ministry for the Environment, Wellington (t)
Ms Helen McAllen, Conservation Officer, Department of Conservation, Nelson (t)
* Ms Sarah McRae, Senior Planner, Department of Conservation, Nelson
Mr Ray Grose, Field Centre Manager, Department of Conservation, Picton (t)

Iwi Representatives

Ms Yvonne Burns, Te Atiawa Manawhenua Ke Te Tau Ihu Trust
* Mr Bill McCready (t), Te Runanga O Ngati Kuia
* Mr Alan Riwaka, Te Atiawa Manuwhenua Ke Te Tau Ihu Trust
* Mr Merv Sadd, Te Runganga a Rangitane O Wairau

Local Non-Governmental Organisations

Mr Murray Anderson, Ravensdown, Nelson
Mr Jim Chapple, Marlborough Environment Centre
Mr Bob Crum, Marlborough Environment Centre
* Mr Neil Deans, Nelson-Marlborough Fish & Game Council
Mr Leo Jelinek, Tasman Forestry Ltd, Renwick
* Ms Susan King, Chairperson, Marlborough Conservation Board
* Mr Tim Newsham, Marlborough Environment Centre
Mr Tom O'Connor, Spring Creek Residents' Association
Ms Brigid Orman, Marlborough Chamber of Commerce (c)
Mr David Rudd, Arable Section, Federated Farmers, Marlborough Province

Applicants

Mr S A & Mrs R A Clark, Karaka Point
* Mr G R Clark, Karaka Point
* Mr F W & Mrs N A King, Renwick
* Mr B N Perry, Underwood Farm Ltd, Christchurch (w)
Mr S Yealands, Marlborough Mussell Company, Havelock

Consultants

Mr V T Ayson, Registered Surveyor, Ayson Davidson, Blenheim
Ms C Foster, Works Consultancy, Wellington (t)
Mr G Haymes, Gilbert Haymes, Registered Surveyors, Blenheim
Mr R D Sutherland, Property and Land Management Services, Blenheim

Other Submittors

Mr S R Acton-Adams, Picton (t)
Mr Peter Beech, Waikawa
Mrs M J Campbell-Board, Karaka Point
* Mr Jim Jessep, Chairman, Marine Farmers' Association, Blenheim
Mr I Lucas, Karaka Point
Mr I Mathieson, Karaka Point
Ms M Moorhouse, Karaka Point
Mr Chris Rhodes, Blenheim (t)
* Mr P Rothwell, Karaka Point
Dr E Slack, Spring Creek

Others

Mr Ray Hancock, Onamalutu (t,w)
Hon Doug Kidd, MP for Marlborough (c)
Mr R A McArthur, Kenepuru
Mr Tony Orman, Marlborough Express

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