

**Environmental Management by Local Authorities
under the Resource Management Act 1991**

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

**Background Report
UPPER HUTT CITY COUNCIL CASE STUDY**

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

These findings are from 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 are 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.

Throughout this report "assessment of environmental effects" is abbreviated as AEE, and the Resource Management Act 1991 is abbreviated as RMA.

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1. COUNCIL STRUCTURES AND PROCESSES

1.1 Council structure

Upper Hutt City Council (UHCC) is divided into three departments: Community Facilities which includes the City Planning Division, and the Property Division; Operations and Development which covers the infra structural services and parks; and Finance Department. Each department director reports directly to the Chief Executive Officer (CEO) who has overall responsibility for 120 - 130 staff.

1.2 Council-committee format and procedure

The Upper Hutt City Council has two standing committees which deal with resource consent applications - the Judicial Committee (five members including one vacancy) consider matters which require a hearing and the Development Co-ordination Committee (five members) which considers all non notified applications and consents for controlled activities. With the exception of the chairman, members of the Judicial Committee are also members of the Development Co-ordination Committee. This presumably ensures some consistency in resource consent decisions. Both committees are serviced by the City Solicitor who provides guidance on procedure and points of law.

The Judicial Committee meets, as required, but monthly meetings are scheduled, while the Development Co-ordination Committee meets fortnightly.

The Council uses the standing orders prepared by the Standards Association of New Zealand.

Annual expenditure for processing resource applications is approximately \$130,000 which covers salary and overheads. Approximately \$88,000 is recovered from consent application fees.

1.3 Delegations

The delegation to process resource consent applications and to exercise the discretion vested in the Council by the Resource Management Act (RMA) is made to the Chief Executive. However this delegation excludes the power to approve or decline a resource consent except for non-notified applications for subdivisions in certain circumstances and boundary adjustments which comply with all the requirements of the District Plan.

This means the Council delegates decisions on whether or not to notify a consent application and to determine who may be affected by the granting of a consent to the Chief Executive Officer alone, acting on the advice of planning staff.

The Development Co-ordination Committee has delegated authority to make unanimous decisions on non-notified resource consents and such decisions occur in the majority of cases. Should the Committee reach a non unanimous decision it submits it as a recommendation to a full council meeting.

The full council may add or amend conditions that the Development Co-ordination Committee recommended, and may even virtually reconsider the case on the basis of a planner's report and the committee's recommendations.

The Judicial Committee may only make recommendations to the full council, and the council cannot lawfully overturn a Judicial Committee decision, but may refer an issue back to the committee for reconsideration of some aspect. Other alternatives, although rarely used, include requesting the Judicial Committee to rehear an application, the council as a whole rehearing, or the appointment of a Commissioner to rehear the application.

Meetings of the Development Co-ordination Committee begin with a 20 minutes session during which any member of the public may address the committee on items before it, or on any concern which falls within the committee's terms of reference. Sometimes members of the public use this opportunity to comment on non-notified consent applications yet to be decided by the committee notwithstanding that the person commenting is not a party to the application proceedings. Councillors may ask questions but there is no ability to cross examine. Under the RMA the committee can not take such comment into account in its deliberations. The frequency of occasions when people, who are not party to a consent application, comment on non-notified applications before the Development Co-ordination Committee may provide an indicator of whether community concern was sufficient to suggest the application should have been notified. (See 3.1).

In both committees, the members, applicants, and in the Judicial Committee, those affected, are notified a week to 10 days in advance of the meeting to consider the application and are provided with copies of the consent application documentation, third party submissions (Judicial Committee only) and Planning Department report to the Committee. All such meetings are notified in the local newspaper and each agenda is available at a number of council sites (eg Office, service centres, libraries). A range of organisations, such as urban associations, are also sent agendas, and recently in the absence of an active rural association, an individual has been identified as a contact point who receives agendas on behalf of the rural farming community.

As a matter of policy the Chair of the Development Co-ordination Committee inspects the site of every application with most of her committee, and a council planning officer. Councillors when they discuss an application for a resource consent are expected to be able to talk from on-site experience. The Chair may question the contribution of Councillors who have not inspected the site. Although inspections are time consuming, the Chair considers this practice actually speeds up the Committee meetings.

She advised that applicants were often surprised but appreciated that councillors took the time to make site inspection visits. Senior councillors believe the committee procedures the council follows act as a useful public relations exercise and one consultant surveyor commented that he considered the committee system that the council used for resource consents had served the Council well.

The Judicial Committee has to make its decisions on the basis of information provided at the hearing, thus no formally organised committee site visit takes place. However, the Chair, and many committee members, endeavour to make a site inspection before a hearing.

1.4 Staff support

The Planning Department staff comprises a city planner and four staff positions. Currently there are two staff with 6 and 2 years experience respectively. Two vacancies are being filled. Existing staff are all graduates who have degrees in planning.

Current staff responsibilities are allocated in the Department so that one person deals almost exclusively with all the subdivisions while remaining staff deal with other applications. The least experienced person also acts as the first point of contact for all enquiries.

A consultant has been employed to assist in the preparation of the new district plan. Should a particularly complex or technical resource consent application be presented to council, the CEO has discretionary funds which could be used to employ consultant(s) to assist. The Council does not usually consider it necessary to seek additional assistance.

1.5 Training

The council has a consolidated fund to use for all staff training and supports the ongoing development of staff expertise. Divisional directors have delegated authority to approve staff training and attendance by staff members at conferences relevant to each departmental heads' staff development programme.

One councillor commented that the current CEO had adopted a more proactive training policy for staff than his predecessor. However this councillor also felt more training could be provided for the councillors themselves. The Council provided informal induction to councillors at the time of their election and, in terms of the RMA, some councillors have availed themselves of training opportunities (on occasions at their own expense) provided by the Local Government Association and Ministry for the Environment (MFE). However one councillor nevertheless held to the view that there is a need for more training for councillors. The now defunct Local Government Training Board used to provide an introductory training programme and the councillor has suggested that the Central Institute of

Technology could run appropriate training courses on a nationwide basis for councillors. The Local Government Association is also becoming more active in promoting the development of councillors local authority expertise.

Councillors also receive a "Councillors Handbook" regularly produced by the New Zealand Society of Local Government Managers for the guidance of councillors in their general responsibilities, functions and on their relationship with council staff.

1.6 District Plan

A transitional district plan (City of Upper Hutt Transitional District Plan Review No 4 (1994)) is still operative. This was developed from the amalgamation and consolidation of the two previous authorities' schemes. A plan prepared under the provisions of the Resource Management Act is expected to be notified in October 1995.

1.7 Liaison arrangements

1.7.1 Local authorities

The Wellington Regional Council has developed a draft protocol for use with adjoining territorial authorities when joint consideration of applications for resource consents is being undertaken. The protocol clarifies responsibilities of the parties and the liaison and organisational requirements. Associated with this is a draft set of procedures for joint hearings in respect of resource consent applications. There has been an exchange of district plans and no cross-boundary conflicts have been identified.

1.7.2 Iwi

Te Runanganui o Taranaki Whanui ki te Upopo o Te Ika a Maui is the tribal authority in the area. Its principal officer is known to the Mayor and Chief Executive Officer of the council but in contrast to some other local authorities in the area no formal consultative arrangement has been established with the authority. This situation would appear to be as a consequence of an issue of funding between the two parties. The Council has provided the authority with all possible information, sought to develop an exchange of information, and tried to facilitate the authority's involvement in decision making. Council had hoped the authority would identify any specific issues of concern in projects such as the District Plan Review and from that might move into a contractual relationship to explore the identified issues. The council also liaises with the local community marae (Orongomai Marae) which although not tangata whenua does represent local Maori. The marae has responded to consultation opportunities without making demands for payment.

The authority has limited resources to respond to the requests to consider documents from the five or so local authorities in its area. These often have short deadlines and several councils requests may overlap.

The UHCC CEO believes there has been no demand from either side for the creation of a Maori liaison group within the council. There does not seem to be any priority issues of Maori concern which effect the Upper Hutt Council.

1.7.3 Other agencies and organisations

The council has confirmed with the local branch of the Royal Forest and Bird Protection Society (RFBPS) its request to be recorded as an affected party for resource consents which are compatible with the society's objectives and interests.

1.8 Statutorily required performance

The Upper Hutt City Council participated in a MFE review of local authority implementation of the RMA in the first twelve months after its enactment. The study analysed the time the Council took to process resource consents.

The results were:-

Non-notified land use consents	89.4% processed within time
Non-notified subdivision consents	51.1% processed within time
Notified land use consents	80% processed within time

The Ministry set out a proposed information spread sheet which could be used to give more detail of the time frames for each procedural stage. UHCC has set up its own variation of the information sheet to track applications but does not have a current detailed analysis available. For all forms of resource consent the current estimated performance is that 88% of applications are processed within the statutory time constraints.

1.9 Monitoring

The council does not consider itself large enough to be able to separate enforcement responsibilities from planning/consent responsibilities. Also because planning staff move around the district it is efficient for them to also exercise a monitoring function. However only the City Planner has the delegated authority, with certain provisions, to be an Enforcement Officer under ss 332 and 335 of the RMA.

The majority of the monitoring which occurs in the district is as a consequence of the sequential actions involved in many of the consents the council deals with. There is a self monitoring in that one stage of a project cannot proceed until a previous step has been checked off.

Following up complaints is an additional form of monitoring.

One-off conditions are formally followed up, and one of the case studies is atypical for this Council because there is a monitoring condition in the consent. However there is no long term monitoring regime in place.

The council has an Inspection Services Department under the Operations and Development Division so there is a structure already in place to effect a division of function if inspection staff were to be given RMA related inspection responsibilities.

2. AEE INFORMATION AND ANALYSIS

2.1 Advice to applicants

For people applying for resource consents, the council has prepared an information sheet which covers matters that should be included in an assessment of effects on the environment. The information sheet is in effect a reprint of the Fourth Schedule of the RMA. The Council holds MFE resource management material but it does not usually distribute it to consent application enquirers. The Council's "Resource Consent Application Form" does not provide any further guidance for applicants in terms of environmental effects assessment but simply notes that an assessment of any effects is requested to be attached to the application. One form is used for all types of applications, having different sections for applicants to complete depending on the type of consent sought.

Council staff observed that one firm handles the documentation for a significant number of the development proposals in the area. The principals of this firm and council staff have a working relationship and communicate readily if any questions arise over the content of the assessment of environmental effects (AEE).

Because all telephone and counter enquiries are handled, in the first instance, by one staff member there will be some consistency of advice. A local consultant surveyor considers the advice he has received has been consistent. Approximately 80% of enquiries concern building consents. Any discussion is not generally recorded though if a proposal is unusual or requires interpretation of the rules the applicant is asked to submit any concerns in writing. Occasionally the information in some applications is deficient despite oral advice to the applicant prior to lodging their application.

Staff consider it difficult to keep notes of oral advice and file them in such a way that they could be readily identified to compare with information in an application when they eventually receive the application. Considerable time can elapse between consultation and the lodging of an application which may be in the name of someone else or an organisation not identifiable with the person making the initial enquiry.

Advice is given on who should be consulted about any proposal requiring a consent application but there are no standard criteria for defining who these people should be - direct neighbours or all neighbours for example. At the pre application stage the applicant is responsible for determining who is affected and therefore who should be consulted. The council does not have handout information to guide prospective applicants.

Consultation with tangata whenua is recognised but the iwi authority may require payment for consultation in the preparation of an AEE if the issue is of sufficient concern. The council can supply applicants with a list of contacts for local iwi.

Should a proposal be likely to require consultation with iwi a local planning consultant advises his clients to see if there is some way they could alter the proposal so as to avoid the necessity for consultation. Thereby avoiding additional costs and time, and possible restrictive conditions.

2.2 Applicants pre-application consultation

The extent of an applicant's consultation with others depends on the advice from their consultant and/or council staff, if council staff have been contacted. Identification of parties who may be affected can only be made on the basis of experience with similar issues. There is no council protocol to assist applicants or council staff in defining who may be deemed to be affected.

The council has prepared a form for use by resource consent applicants when they consult with affected parties. The purpose of the form is to record an affected party's approval of the proposal. It asks the affected party to verify that they have been shown plans of the proposal and the assessment of the environmental effects prepared by the applicant, and to acknowledge that in signing the approval form the consent authority can now no longer take into account any actual or potential effects the activity and/or proposal may have upon the consenting affected party when considering the application.

However when an applicant seeks the approval of an affected neighbour there are no specific guidelines to establish the adequacy and detail of the information, whether the affected person understood the information, whether they had time to consider the information at their leisure and whether any person proposed an inducement in order to encourage agreement. Often initial documentation may be in a draft form which is amended as a consequence of consultation before it is included as part of the application.

A consultant surveyor commented that the approval form does not require a reason for an objection and he is disappointed that the council may decide to notify an application on the basis of undefined or unsubstantiated reasons.

The Commissioner has been shown documentation for a claim for \$10,000 by a potentially affected party as a fee for giving approval to a proposal.

Examples were sighted of people signing an approval form but stating they have no objection provided certain conditions are included. If the application is notified then people involved can confirm their concerns have been addressed by the applicant or in the staff report. However the issues underlying such conditional consents would have to be addressed by the proponent or the conditions requested be outside the ability of the council to impose before the CEO would consider letting the application be non-notified. Council policy is not to accept a conditional approval as an approval at all, and in the examples mentioned the application was notified.

An individual's surest way of ensuring their concerns are considered is not to give their approval but to make a submission to council and to lodge an objection if the application is notified.

2.3 Council's AEE assessment procedure and standards

Staff assessment of an AEE has been described as being a "judgement call based on local experience". Planning staff numbers are small and informal discussion and peer review of proposals occur within the group. If there is a conflict of views among staff they may draw up a written opinion for further staff discussion. There is no set of manuals or check list to guide staff in their assessment of an AEE. The City Planner is aware of the "quality assurance" programme being followed by some Councils such as Hamilton City. The council is currently looking at the issue and considering what form of quality assurance programme is most appropriate.

Section 104 of the RMA lists matters a consent authority shall have regard to when considering an application (and any submissions received). The staff reports for the case studies selected are generally adequate in this regard although they say nothing about compliance with any regional plan (s 104(f)). The reports are generally informative and well laid out with a consistent style.

The council's standards for a range of activities are set out in the District Plan. In reports on a resource consent application prepared for the appropriate standing committee, staff draw attention to the various ordinances which may impact on the proposal and the extent the ordinances may provide the council with discretion to grant dispensations to an applicant to achieve their objective.

One applicant has suggested that use of such ordinances is inappropriate under RMA because they do not assess effects. However controls such as site coverage for example, may be viewed as a form of performance criteria against which the effect of a building on the open space amenity values of an area may be judged.

Although staff have access to Ministry for the Environment (MFE) publications and resource management guidelines they do not generally refer to them when assessing an AEE. In the staffs' experience the applications handled have not been so complex as to warrant reference to MFE material.

A councillor was critical of the lack of detail in some staff reports on applications, and considered there was insufficient evidence to assess the degree or absence of adverse effects.

2.4 Adequacy of applicants' AEE

Council planning staff consider that they ask at least 50% of applicants to provide additional information under s 92 of RMA. Most applications concern small issues such as boundary adjustments and structures and often the first contact that council

staff have with an applicant is when the application is presented. Unless an applicant has had some previous resource management experience staff feel applicants tend to work to the minimum of what the Council expects. This perception tends to confirm one councillor's view that many AEEs are of poor quality with, in his view, inadequate support for some of the claims made regarding environmental effects.

Council staff feel the public have a problem with the concept of "environmental effects" and the wide gamut of situations and conditions that could be considered as effects. On-going ecological type effects are generally not an issue with urban related consent applications. Staff have provided well prepared AEE examples as models. There has been a tightening up of the assessment of effects and staff no longer accept "no effects" statements without any corroborating evidence.

While staff do not confirm an applicant's consultation with others, if they consider that the applicant has not consulted with a potentially affected party or has not consulted adequately, staff will point this out to the applicant.

Council has retained information it has received from previous applications but there has not been much public demand for such information. Staff also noticed that with the dominance of one consulting company, there is a repetition of the information and justification for each new proposal of a similar nature. Staff feel any generality of argument used for proposals of a similar nature weakens the Council's criteria if discretion are expected to be exercised on the basis of an argument that is specific to a particular site.

A development consultant noted that his approach is to comment on the major issues as and when he has identified them, possibly after he has consulted with council staff. Therefore he does not necessarily comment on all the items listed in the Fourth Schedule of the RMA but tries to ensure the scale of the AEE accords with the scale of the effects.

More detailed comment on the adequacy of a sample of applicant's case study AEEs is made in the section on each of the case studies.

Expressing the view that while the RMA is very good for the environment one councillor has publicly stated her concern about a conflict she sees between a person's ability to meet their own needs and being able to show there will be no environmental effect now and in the long term effect on future generations.¹ She claims that an inability to take account of social consequences in many planning decisions will marginalise social issues and will not achieve balanced planning.

¹ Christianson, Patricia, 1995; A councillor's perspective on implementing the Resource Management Act 1991. Feedback Newsletter of the NZ Planning Inst. No.79 April 1995 p33

2.5 Council as applicant

Where the council is an applicant for a consent from itself an attempt is made to separate the two roles of proponent and consent authority. In some cases the proponent department will only use its own staff to prepare the application. In complex issues a planning officer may be seconded to work with the appropriate council department in developing the proposal. Planning staff different from those developing the proposal would be assigned to prepare the assessment of the application for council decision. The seconded officer, chosen for an ability to be an advocate for the proposal, has no part in the consent processing from a regulatory angle and does not report through the planning department head concerning the assignment. At a hearing this person's is an expert witness and advocate for the proposal and so will vigorously defend the proponents' position.

There was public comment that this separation was not perceived as being as transparent as the council had tried to make it. Separation of roles might be better understood if in documentation for the application, and at any hearings, the seconded person is identified as a planning consultant to the proponent rather than by their official planning department title.

The council has not called upon an independent Commissioner in at least the last 4 to 5 years. The possibility is not overlooked but the CEO considers an issue would have to be highly significant and contentious before council would appoint a Commissioner.

The council's consultation with affected, people in relation to the Norbert St Bridge proposal, was with individuals, and a community meeting was held. An objector felt that while council staff readily supplied information and met them on site the thrust of such consultation was to obtain the objector's consent for what was described as an "aesthetically pleasing design", rather than to reach a compromise which addressed the objector's concerns.

3. NOTIFICATION AND THE HEARING PROCESS

3.1 Notification

On the basis of planning staff advice, the CEO decides whether or not to notify an application. Criteria for advice are derived from staff judgement; indicators in the RMA and the District Plan, such as there being no objectors, all affected people have given approval; or that environmental effects have been assessed as minor. A summary form records the exercise of discretion for an application under the RMA which confirms:

- the type of activity for which consent is sought (controlled/discretionary/non-complying);
- that the information meets the requirements under section 88 RMA;
- that written approval has been obtained or will be required from every affected person and lists those from whom consents are required; and,
- that the effects are minor;

before the discretion provided in section 94 of the RMA to notify or not is exercised.

In the 1993/94 year only 3% of all consent applications were notified but all of these attracted submissions. This may indicate there is a greater degree of public interest and concern than the Council is assessing and a more precautionary approach to the decision to not notify an application, which will result in more notified consent applications, is justified. Certainly in one case example a person raised issues which were not canvassed as they might have been if the application had been notified.

3.2 Pre-hearing meetings

Section 99 of the Act provides for pre-hearing meetings but the provision is purely enabling in that "... a consent authority may, upon request or of its own motion ..." hold a pre-hearing meeting. In one case studied objectors believe a pre-hearing meeting would have resulted in a better environmental out-come with less acrimony between council and objectors. They believed that council did not consider such a meeting was necessary, but the objectors themselves had not made clear their desire for such a meeting.

The council is totally open to the use of pre-hearing meetings. Whenever there is a request then staff will arrange one, but staff have not actively promoted their use. Pre-hearing meetings have not been frequent in the district and staff could recall only two in the last four years.

A second case studied did have a pre-hearing meeting initiated by the Regional Council principally which required the two consent authorities to get together with

the proponent and consider conditions. An objector attended this meeting, and while he was able to discuss his concerns they were not resolved. Notes of that meeting clearly summarise the discussion and identify what further options the objector could take to seek mitigation of his concerns.

In another application sighted during this investigation, where a pre-hearing meeting was held, it was unclear whether anybody prepared a report of the pre-hearing meeting and if a report existed, whether it had been circulated or become part of the information which the consent authority has to have regard to when it considers an application. A councillor commented that objectors at the meeting requested, from the proponent, additional information which was not provided prior to the hearing, so that the objectors concerns were not addressed. This lapse highlights the need for all such meetings to be recorded and, possibly, the need for any such record to be circulated, among the key parties at least, to confirm its accuracy.

Section 99(3) of the RMA only says the outcome of the meeting **may be** reported. The Act does not state who may, or may not report - however the CEO considers it is the group's responsibility to make that decision. He suggested a record is vital if the meeting is to achieve its purpose.

3.3 Hearings

Hearings are conducted as informally as possible.

An objector to one of the examples studied (the afforestation project) where the council was proponent, felt the hearing had been very confrontational and not at all conciliatory. The objector had an expectation that the consent granting arm of the Council would have taken a more mediating role in the proceedings given, that the staff report supported conditions the objector had suggested.

In the Norbert St bridge example, in which the council was the proponent, the objector expressed the view that while the hearing gave them an opportunity to speak they, nevertheless, felt that the granting of consents was virtually a *fait accompli* and the council would not compromise over its preferred design and location for the bridge.

The consultant surveyor notes that the way either committee is run has an impact on the proceedings. He suggested there needed to be confirmation that an issue raised, like a question from a "primed" councillor, was in fact "new" and had not already been addressed in the application reports or discussion.

3.4 Joint hearings

The Regional Council has prepared a protocol for joint hearings with territorial authorities. However the need for joint hearings has been almost non existent to date.

Wellington Regional Council staff advise they have been happy with the way the joint hearings held under the Resource Management Act with the Upper Hutt City Council have proceeded. Because the Upper Hutt City Council Judicial Committee's powers are only recommendatory it is not possible for a joint hearing to make joint decisions. The only practical effect of this situation is an additional time delay until the full council can confirm the recommendations of its Judicial Committee.

An objector at the joint hearing regarding the Norbert St bridge felt the proceedings were fairly daunting.

3.5 Tribunal hearings

The City Solicitor distributes to the City Planner and councillors all tribunal decisions in which the UHCC is involved. The council also distributes case law examples from various law update publications to which it subscribes, to assist in interpretation of the legislation. The consent application examples studied have identified an instance when the system failed to ensure changes required in the district plan by the Planning Tribunal were appropriately promulgated.

4. THE CASE STUDIES

4.1 Introduction

The examples of consent applications processed by the Upper Hutt City Council (UHCC) which were examined in detail cover applications for a bridge, a quarry, an afforestation project, a rural subdivision, and the erection of a rest home in a residential conservation zone.

These examples were chosen from a short list of about 20 applications selected by the City Planner from guidelines provided by the Parliamentary Commissioner for the Environment (PCE). The guidelines sought resource consent applications considered since the Resource Management Act has been in place (October 1991) which have public interest and highlight issues in the areas of "greenfield" industrial development, quarrying/mining, forestry, subdivision, and any which may have had the Council as a proponent of the development. The examples chosen are more representative of "controversial" rather than "typical" consent applications for this council.

Council documentation for each case was perused and discussions held with the proponent, their advisors and some objectors. Each case is reported within the following general format:

- a general statement of the project;
- details of the AEE of the application;
- consultation which occurred and the issues identified;
- efforts to ameliorate issues highlighted;
- the hearing;
- conditions imposed;
- appeals if any;
- objectors expectations and view of the procedure;
- additional or unusual features of the application; and
- subsequent outcomes since the application and decision.

4.2 Norbert St bridge (350/17/418)

4.2.1 Introduction

This case involves the decision by the Upper Hutt City Council to construct a new footbridge over the Hutt River to replace the swing bridge at Maoribank which was damaged in a flood. The proposal was that the bridge should have sufficient capacity to be able to provide access for emergency vehicles of up to almost 3 tonnes weight, and would also carry essential services such as a water main. Tenders were called on a design-build basis.

The bridge crosses the "river zone" and on its western side is anchored on top of the river stop bank. The bank is designated "esplanade/river berm/river protection" with an underlying zoning of Residential General. Upper Hutt City Ordinances for this zoning provide that public utilities not permitted as permitted activities are discretionary activities. Also the bridge is specified as a conditional use because it is a structure extending into the air space of the river zone. Therefore as a conditional use, in terms of the District Plan Proposed Review No 4, the application must be dealt with as a discretionary activity under s 374 RMA. As the bridge extends over the river, s 13(1)(a) RMA imposes a requirement for a resource consent from the appropriate (Wellington) Regional Council for a non-complying activity.

4.2.2 The application

Once it received the design-build tenders the council selected the particular bridge design and build package which became the basis for the consent application. This was developed by the Operations and Development Department of the UHCC as proponents of the development. In their assessment of the environmental effects of the bridge, (which corresponds with the matters detailed in cl 2 of the Fourth Schedule RMA) the department identified the following:-

Socioeconomic and cultural - would establish a pedestrian linkage between Totara Park and the northern suburbs, and provide emergency vehicle access. Alignment was intended to minimise effects on privacy levels and in aesthetic terms. An increase in pedestrian flows was anticipated.

Physical effect including landscape and visual effects - claimed is an innovative design, aesthetically sympathetic to the locality which will weather to a natural shade harmonious with the surrounding environs. No pier is required in the stream bed and the deck design height is intended to cope with a 1,000 year flood.

Effect on ecosystems - no effect on fauna or flora was foreseen as the river bed would not be disturbed and no vegetation removed apart from mown grass.

Effect on natural and physical resources having ... value for present or future generations - none were foreseen.

Discharge of contaminants - No discharge of contaminants. Bridge users may generate some noise but it was not considered that such noise would reach levels unacceptable within the adjoining residential environment.

The Director of Operations has noted a problem with design-build contracts is that to obtain the information needed for the consent application a contract has to be virtually let to confirm the features of the project.

4.2.3 Consultation

Council staff identified that those potentially affected by the proposal would be the immediate neighbours at the western end of the bridge, and Operations and Development staff consulted with those people.

The application was notified and one additional submission from a party not previously contacted was received. Concerns raised in consultation and submissions were:

- visual and aesthetic impact;
- impact on privacy;
- property value depreciation;
- disturbance because of increased use of the area - alternative locations should be considered;
- vehicle parking and movement problems in Wyoming Grove; and
- effect on the security of the river flood way.

One objector considered that there should have been much more community consultation concerning the design and positioning of the bridge prior to the council's decision as to the type of bridge. The objector agreed it was in the community's interest for a bridge to be built but contended the design was too imposing for a simple link between two residential areas. The objectors were not given any comparative costing information which might have helped them understand the proponent's desire for this particular design over others. It is also not clear whether the objectors understood that because of the design-build contract the council was virtually committed to the particular bridge design. Consequentially the proponents' ability to respond to some of the objectors concerns would have been limited.

This aspect highlights the need for very early consultation so as to establish the possible concerns of potentially affected parties which might then be incorporated in a design-build brief.

4.2.4 Amelioration of environmental effects

After notification, the objector put his concerns to a pre-hearing meeting. The report of the meeting acknowledged the meeting's inability to resolve his concerns and identified what further courses of action were available to him. Amelioration efforts agreed during consultation and at the pre-hearing meeting covered:

- the alignment of the bridge was to be shifted an additional 20 m away from an objector's property to give a 60 m separation;
- barriers preventing unauthorised vehicle access were to be erected;
- the bridge would be lit;

fences would be built to separate the path to the bridge from adjoining properties;
 construction materials of the bridge pier were changed in order to present a less obtrusive construction;
 City Council would consider no parking lines in Wyoming Grove if public parking blocks private driveways;
 the Council offered to plant screening vegetation and to supply materials to add height to one objector's fence.

Although, as a consequence of the shift in bridge alignment away from an objector's home, they were considered to no longer be "adversely affected", the application was still notified.

4.2.5 Hearing

A joint hearing between the Wellington Regional Council and the Upper Hutt City Council was held (as applications for resource consents in relation to the same proposal had to be made to two consent authorities), but the councils made separate decisions on the resource consent applications because of the UHCC policy that Judicial Committee decisions are only recommendations to be confirmed by the full council. Detailed advice of the hearing agenda, procedure and conduct was provided to all parties.

The consent authorities both concluded that the public benefit from the bridge outweighed any detrimental impact it may have had on the objector and other local residents.

4.2.6 Conditions imposed at the hearing to mitigate effects

The Regional Council imposed conditions in terms of construction activities and supervision of work on the stop bank and also required upstream toe protection works as a protection for the security of the river-flood way.

The Upper Hutt City Council imposed conditions which required the bridge be built in accordance with the plans. However, a concrete pier was to replace the galvanised steel one in an attempt to mitigate the visual impact of the bridge. Limits were also placed on the hours during which construction could take place.

4.2.7 Additional feature of case

The City Solicitor advised the Acting Chief Executive that as:

"the Council is the applicant; ...it appears that it is common knowledge that the Council has already let a contract for the bridge inviting the inference that the Council is under pressure to grant the application; [and, in his opinion] ...the objectors may overlook the need to make their wishes clear;"

it would be appropriate to have a hearing and in view of the significance of the council's "interest" and to avoid potential conflict, an independent Commissioner should be appointed to hear and decide the application on Council's behalf. This advice was accepted apart from the appointment of an independent Commissioner.

When giving evidence on the proposal Upper Hutt City Council staff indicated whether they were providing information as proponent or as a member of the consent authority. In this case, different members of staff from different divisions acted as advocate for either the proponent or for the consent authority.

In discussion with the Director of the Operations and Development Division during this investigation, the contribution the bridge makes to the security of services to Totara Park area became more apparent. The bridge alignment allowed the council to link into existing water mains on either side of the river and thereby complete a ring main for Totara Park which was previously only served by a single main over the road bridge south of Maoribank. Emergency vehicle access was to be provided in addition to the one existing road bridge. However the security of other reticulated services to the area was also enhanced. Heavy overhead power cables which crossed the river at the bridge location were able to be removed and the bridge now carries both gas and telephone services. It is not apparent whether these additional benefits were promoted during discussion of the project.

4.2.8 Notice of appeal

The objector gave notice of an appeal to the Planning Tribunal on the grounds that alternative sites had not been considered, but subsequently withdrew the appeal.

There was some discussion at the pre-hearing meeting about the choice of site and during the hearing the proponent did detail alternative sites and design options. However the hearing concluded that as the application was in terms of the Norbert St site, then the hearing proceedings should focus on this site rather than on any possible alternative locations.

Documentation was sighted at UHCC which showed the council had undertaken some consideration of alternative sites and it had concluded that the chosen site was the safest in terms of river bank stability and access during construction. Given the objector's view of the information perhaps the alternative locations for, or forms of the structure were not adequately explained so the objector could understand the reasons for the choices the council made.

The UHCC also appealed the Regional Council consent with regard to understandings for the sharing of costs of some work on the stop banks and this was resolved without a hearing.

4.2.9 Objectors' expectations of support from the Act

The principal objector to the Norbert St Bridge thought the RMA was supposed to help them and was surprised that objectors did not seem able to get any leverage for their concerns about the environmental effect of the bridge. The objector expected that some compromise could be reached as a result of the considerable discussion over a period, but now felt discussion was just continued effort by the council to try to get their approval. The objectors had to be able to argue there would be a dramatic effect before they would be able to achieve their objectives. They were surprised at the potential costs full legal representation would impose especially if they appealed the council's decision and so felt their ability to participate would be inhibited. They were assisted in the presentation of their objections by an acquaintance who was entering the legal profession and he considered the council to be very flexible and accommodating in terms of meeting legal obligations and providing information.

4.2.10 Subsequent outcome

Now that the bridge has been built the objectors feel its impact is much greater than they had imagined. It can be seen protruding above the roof tops from quite a distance and a suggestion to the Commissioner was that the council should have canvassed its proposal more widely among the community in a search for a structure more in harmony with the location. There was a feeling that the innovative design focused the council's mind to the exclusion of considering other structures.

Although the council at the pre-hearing meeting offered to plant some screening vegetation they considered this offer lapsed when the objector took his concerns to the hearing where no conditions were set requiring planting. This was not understood by the objector who requested action when no planting took place. The Director of Operations advised the objector that the council was not bound to do anything, but did arrange the planting of screening vegetation. Unfortunately the trees were vandalised or damaged after they were planted, so that at present there is no sign of the intended vegetative screen. The Director of Operations has advised in discussion that he would arrange replanting of screening vegetation in the area. The council offered to supply fencing materials on the same basis accepted by other neighbours, but the objector was not able to afford the costs of erection.

4.3 Quarry - Whitemans Valley Rd (350/62/462)

4.3.1 Introduction

This case involves the establishment of a quarry which selectively extracts boulders exceeding approximately 250 mm in size for use in river bank erosion control and as harbour armour rock from a site some 2.5 kms into the hills off Whitemans Valley Rd.

The area lies in both Rural A and Rural B zones. Quarrying is a non-complying activity in Rural A and a discretionary activity in Rural B under the Transitional District Plan. The council's criteria under which consent may be granted are specified in the Transitional District Plan.

4.3.2 The application

The proponent is a large company based in Auckland and they used their company geologist and staff experience to prepare its application with little direct input from the council. The company obtained council hand-out material for resource consent applicants, and this indicated to them the need to consult RFBPS and iwi. The company geologist had also highlighted the need to consult with RFBPS and iwi and provided a checklist of what had to be done by local company staff. Their assessment of the environmental effects of boulder extraction and proposed mitigation of effects were:-

Water quality - no intention to work in the stream bed or to use water in the extraction process. Surface "run-off" was to be controlled and treated to ensure no sediment reaches adjacent waterways. There should be no effect on water quality.

Erosion - there would be sequential excavation of the old river terrace gravels and progressive rehabilitation and revegetation programme - there was not anticipated to be any erosion effects. The revegetation requirements stipulated by the land owner are directed towards pasture establishment.

Visual effect - rehabilitation, by back filling with native gravels and spoil would return the area to natural falls and levels, and would pay attention to contours and gradients to match existing land form. Stock piles of material would be kept to a minimum as material will only be extracted on a contract by contract basis and spoil used in progressive backfilling. The site is in a narrow valley not readily visible from the road.

Dust - the area is contained in high sided valleys, naturally sheltered from winds which would inhibit dust escaping. Since there would be no crushing or extraction of fine materials dust production would be minimal.

Noise - Well maintained vehicles with sound reducing devices installed and in working order were to be used. The nearest neighbour is approx 4 km away so any

noise produced was not expected to be a disturbing factor and would not exceed 55 dBA during working hours. The proponent based this claim on machinery operating guidelines and experience from its Auckland operations where residential housing was less than a kilometre away.

Effect on ecosystems - the area is on privately-owned farmland with no significant trees present, current vegetation consists of secondary growth predominantly bracken/titree. Wild life, identified as wild pig and possums, was claimed to be sparse and water life was almost nonexistent, in the opinion of the life-time-resident land owner, because of upstream chemical contamination some years earlier. A four hour survey of stream life by four of the proponent's staff found so little aquatic life, thereby confirming local opinion, that they did not consider that further detailed study was necessary. Moreover the operation would not occur in the stream bed.

Hazards of diesel storage - recognised oil company units were to be used, maximum on site storage would be limited to 4500 litres and a hard standing parking/filling area provided, with bunding protection if necessary.

4.3.3 Consultation

The proponent's attitude to consultation was that they needed to talk one-on-one with all those affected. Their local quarry manager used his experience to identify contacts and also had a council prepared list of organisations and names to contact. The landowner assisted by identifying the neighbours potentially affected by the site. He visited these neighbours with the council prepared approval form and discussed the proposal, with some on site discussion if required. This process started about Labour weekend 1994. There was no formal assessment of environmental effects (AEE) at this stage but a broad plan of the operation, which included a quarry management plan and anticipated work hours. An AEE was available by December at the time neighbours granted approval.

The proponent consulted with local iwi and with RFBPS Head Office staff and obtained their written comment, and the approval of affected parties in the area on the Council form prepared for this purpose.

Issues raised in consultation with iwi and RFBPS were:

- protection of fish life (eels) down stream once operations were underway;
- protection of the stream's character and quality,
that is essentially a boulder bottomed stream,
- avoidance of stream siltation,
- retention of riparian vegetation,
- exclusion of introduction of aquatic weeds from other catchments.

Comments seem to have been on the assumption that work would be carried out in the stream bed, which would be a matter for the Regional Council's consideration. The final form of the application expressly excludes work in the

stream bed, partly as a consequence of the environmental issues raised, but also because of the cost of such an operation.

When the proponent had developed their application this was discussed with Council planning staff, and a site meeting held. Tracking from site to the road would be upgraded and metalled which will minimise tracking of mud onto the Whitemans Valley Rd, and hours of operation were specified. This upgrading of the access was not seen as an issue requiring any consents.

4.3.4 Amelioration of environmental effects

Because of the extra costs involved, the need for another regulatory authority's involvement in the consent granting and monitoring process, and the concerns of iwi and RFBPS over impacts on the stream, the company decided to remove these impacts by not working the stream bed.

No comment on traffic movement impacts was made, and traffic movement did not appear to be an issue. With the proposed operation taking place only on an intermittent basis as contracts are obtained, extraction quantities and detailed movements were not estimated.

4.3.5 Conditions of the consent

The application was not notified because the consent of those affected had been obtained and the environmental effects were considered to be minor and the Development and Co-ordination Committee of the UHCC considered the application on the basis of reports from engineering staff and the City Planner.

To mitigate the impact of quarry traffic movements, conditions of the consent required the applicant to erect road signs during the time of removal of boulder rock. Truck movement was limited to the hours specified in the application and outside the times of the school bus operation, and truck access was to be only via Wallaceville Rd.

The applicant had to:

- provide evidence of satisfactory sewage disposal, as this issue was not addressed in the AEE;
- collect and treat all run off as required to ensure no silt was discharged into the adjacent stream; and
- supply an annual monitoring report which would include maps and photographs detailing the areas worked, restoration undertaken, and environmental impact.

Council planning staff have to arrange a site visit when they received the report. The committee specifically noted when reporting its decision to grant the application, that quarrying would not take place in the river bed (and if it did a

resource consent from the Wellington Regional Council would be required) and that every reasonable step would be taken to prevent debris from entering the stream, and no mature or regenerating vegetation was to be cleared, therefore, the committee concluded there will be no adverse effects on the environment.

This consent is unusual for the UHCC because of the recommendation for a condition requiring an annual monitoring report which has not been a common feature of previous consents which are not normally concerned with a continuing activity with environmental effects.

4.3.6 Expectations of the process

Based on previous experiences in other locations the proponent knew the value of consultation with all parties, and the need to cover all aspects. The company was pleased with proceedings and found the overall process was satisfactory and without surprises. The council approval form worked well. They considered it gave a standard and because it was a council form the proponent felt it had more status and credibility than any form a proponent may develop for the same purpose.

In response to the council's concern about sewage disposal the proponent was to instal "portaloo's" for staff use when they were operating the quarry. At this stage the proponent does not know how the adequacy of any monitoring report will be judged. Possibly the adequacy will be clarified in consultation with council staff once a contract has been obtained and work is about to start on the site.

Planning staff believe that since a site inspection will be part of the annual monitoring process it will rapidly become apparent if there are any deficiencies in the company's report.

4.4 Afforestation project (350/62/308)

4.4.1 Introduction

This case involves the Council Property Manager, on behalf of the UHCC, applying for consent for a proposal to undertake an afforestation programme on 35.5 ha of Council land which forms a backdrop at the southern edge of Upper Hutt. Although initially mooted as a work experience project it was agreed to use prison labour provided by the Justice Department. The current vegetation is gorse and scrub with large pockets of regenerated pine and native bush throughout. The proposal provided for the retention of existing stands of self sown pines and regenerated bush, planting, predominantly of pines, would occur in two meter wide lines cut through the gorse and scrub with four hectares of eucalypts on the northern boundary for amenity purposes.

A 20 m non-millable visual and debris stop barrier is to be provided around the boundary, as required by city ordinance, but in the southern boundary the proponent intended to create this on the unformed portion of the access road. Standard forestry practices would be followed throughout the operation.

The District Plan shows the area zoned Rural B (Restricted) and Residential Conservation in approximately equal proportions.

Forestry is a permitted activity in the Rural B (Restricted) zone where the main planning objectives include maintenance of soil stability, control of stormwater runoff and protection of water quality. The District Plan requires the Council, before granting consent applications, to be satisfied that any use or development will not give rise to any hazard from erosion or land slippage or subsidence or result in any visual or other detracting from the amenities of the district. Removal of any vegetation exceeding one hectare in area, other than trees planted and managed for forestry purposes, is a discretionary activity within the zone. Clearance of native vegetation is a controlled activity.

The Residential Conservation zone provides for single family dwelling houses at a relatively low density and for a restricted level of development. Forestry is a non-complying activity.

A Forestry Development Notice (Ordinance 4.8.3 of the Transitional District Plan), which provides a plan and details of the forest project and management, is required before any land in the Upper Hutt district is cleared for the purposes of afforestation. At the time of harvest a Forestry Harvesting Notice will be required.

4.4.2 The application

The assessment of the environmental effects of the afforestation project commented on:-

visual effects - claimed afforestation will extend and complete the background vista of pines behind Pinehaven. Because of the high visibility of the site, land preparation will not involve complete clearance of vegetation but a grid of planting lines will be cut. 20 m non-millable visual and debris stop barrier will be provided around the boundary of the property.

fire - claimed afforestation would reduce the ever present risk of fire.

fauna and flora - gullies containing small areas of regenerating native bush will be retained.

water quality - no permanent streams were identified on the site.

The approximately half page assessment of environmental effects had very little assessment of effects on fauna and flora and no assessment of potential erosion effects, (which would be diminished by the cutting of planting lines instead of total vegetation clearance), or any assessment of future vehicle movements.

4.4.3 Consultation

The Council as proponent acknowledges there was little consultation with either adjoining land owners (approximately 5) or the wider community. It considered that if people had concerns or objections, notification of the application would provide them with an opportunity to make submissions and have their concerns addressed. However the RMA s 88(6)(b) requires AEEs provided with consent applications to be prepared in accordance with the Fourth Schedule of the Act which in turn advises that the AEE should identify persons interested in or affected by the proposal, the consultation undertaken and response to the views of those consulted.

Council did not consider the area had any significance to Maori so no tangata whenua consultation occurred, and neither was RFBPS consulted.

4.4.4 Notification and concerns raised

The application was notified and five submissions received. Neither Maori interests or RFBPS made submissions. The only submission from a community interest group was made by a railway preservation society which had an interest in land adjoining the site.

Concerns raised in submissions were:

- fire risk hazard;
- the unsuitability of site soils for growing pine trees without the heavy use of fertilisers;
- the appropriateness of planting pine trees on land contiguous with other land on the Eastern Hutt hills included in the Hutt City Council's bush regeneration plans;
- the proposed use of unformed road reserve for a visual/debris barrier.
- provisions for fire breaks;
- the use of eucalyptus species for amenity planting;
- loss of land to which a high value for housing was attributed;
- land instability hazard from forestry operations; and,
- greater consideration for use of native species, especially in buffer area.

An objector claims requests for a pre-hearing conference were refused, but the Council advised that they have no record of a pre-hearing conference being requested.

It appears that the objector did not specifically request a pre-hearing meeting but rather implied in a general way in his submission that it would be helpful to have discussions "at the appropriate time". He felt that the Council would expect any request for a pre-hearing meeting to be made very formally including quoting the appropriate sections of the RMA.

4.4.5 Planning Department evaluation

The City Planner in his report on the application did recommend conditions which addressed some of the objectors' concerns. While his report did not comment on the adequacy or not of the proponent's assessment of environmental effects it did expand considerably on the proponents comments. Also the District Plan requires the Council to be satisfied that any use or development in Rural B (Restricted) land will not give rise to any hazard from erosion, or land slippage, or subsidence, or result in any visual or other detraction from the amenities of the district. The information was inadequate for this purpose because the report did not address this issue. This is a situation in which a request for further information under s 92 might have expected to have been used.

Clearing of vegetation (for planting lines) was not seen as an issue in the assessment or by submitters and indeed no application for clearance had been lodged. It was however raised in the City Planner's report on the application and it is hard to envisage the project not proceeding without some vegetation clearance.

Unfortunately the District Plan provides no guidance on what constitutes "clearing" or how to interpret the "any vegetation" phrase of the discretionary activity which applies to land in the restricted category (Ordinance 5.3.4(d)) or the "any native vegetation" phrase of Ordinance 5.1.7 in relation to a block covered in gorse and scrub.

The City Planner's report recommended consent be granted for a commercial forestry operation involving clearance of vegetation as a discretionary activity on the Rural B (Restricted) area and as a non-complying activity on the Residential Conservation area, even though no application for vegetation clearance as a discretionary activity in the Rural B (Restricted) zone had been lodged.

Consent conditions recommended by the City Planner included the following:

- during vegetation clearance the lines cut were to follow the natural contours as closely as possible;
- the visual debris stop barrier was to be planted in non-millable native species arranged with taller species towards the inside edge (this was claimed to provide a graduated transition to the pine trees);
- eucalyptus amenity planting was not permitted;
- the visual debris stop barrier on the southern boundary was to be provided within the property boundary;
- the width of the visual debris stop barrier on the northern boundary was to be reviewed to take into consideration the topography and the minimisation of risk to the adjoining property, and the barrier was to be no less than 20 m in width;
- significant groupings of native bush were to remain and be protected. Site management was to ensure minimal damage occurs to these areas of bush;
- and,
- standard procedures of the Forestry Code of Practice (NZ Logging Industry Research Organisation), or its equivalent at the time of harvest, were to be applied at all times during the operation.

No monitoring provisions were proposed for the consent by the Council as consent granting authority.

4.4.6 Hearing

The hearing took place before the Judicial Committee,

The Committee in looking at the application appears to have considered that as forestry is a permitted activity on land zoned Rural B, (overlooking the "restricted" classification of the proponent's land), a resource consent was only required for the Residential Conservation zoned land. This opinion was despite the City Planner's report which noted the need for a consent for vegetation clearance on Rural B (Restricted) land. As a consequence only those conditions listed below were included in the Committee's recommendation to the Council, and planting in the visual debris stop barrier provided for planting "... native vegetation and a combination of exotics ..." instead of only native species.

The consent did draw attention to Council Ordinance 5.1.7 of the Transitional District Plan, which requires evidence that the clearing of native vegetation will not be detrimental to soil stability. No evidence was presented either way on this issue which also poses the question of whether anybody deemed the clearance to be of

native vegetation. Given the City Planner's comments on vegetation clearance on the Rural B (Restricted) land a comment on the relevance or otherwise of Ordinance 5.3.4(d) could also have been made by the Committee. The CEO has advised that he does not consider the project involved clearance of either native vegetation, or of vegetation, within the meaning of the Rural B (Restricted) zone.

4.4.7 Conditions imposed at the hearing to mitigate effects

The Committee's recommendation to the full Council reduced the number of conditions and made them less stringent than those proposed by the City Planner, and applied only to the area zoned Residential Conservation. Conditions recommended by the Judicial committee covered the following:

- during vegetation clearance the lines cut are to follow the natural contours as closely as possible;
- significant groupings of native bush are to remain and be protected. On site management is to ensure minimal damage occurs to these areas of bush;
- and,
- standard procedures of the Forestry Code of Practice (NZ Logging Industry Research Organisation), or its equivalent at the time of harvest, are to be applied at all times during the operation.

No monitoring provisions were recommended.

4.4.8 Expectations of the process

Local newspapers had reported the Council's intention and the contribution prison labour would make to the project. This alerted interested parties to watch out for public notification of the proposal.

Public information made available was basically sections from a forestry consultant's report on the proposal. This report was prepared to provide the Council with a plan for the development of the afforestation proposal. Its contents focused on the performance that might be anticipated from the site if it was planted in trees rather than examining the **impact on the site** of afforestation. Consequently there was little in the report which could be used when preparing an environmental assessment. One objector noted that a further visit to council offices was necessary to obtain additional sections of the report. This was because the council, understandably, had not considered sections that discussed establishment costs, tending and harvesting regimes necessary in considering the application. Once he had established his legitimate interest, this objector thought the information flow was good.

At the time of the application, a community society occupying land adjoining the area to be afforested was negotiating to buy other adjacent council land. The society was anxious not to antagonise the council and jeopardise their own negotiations so they adopted, and they encouraged others, to adopt a "soft" approach in dealing

with the council. There was discussion between the society and a private individual about appealing the council decision but this was not taken up for the same reason, and because of the anticipated costs to do so.

The society had a legitimate concern for site stability and developed a series of suggested conditions which addressed their concerns but the council largely ignored these although the concerns gained the support of the City Planner in his report to the Judicial Committee.

The Committee apparently had a full agenda the day of the hearing because several objectors commented on the delay to hearing the application and the inability of some to remain until it was heard. From objectors' accounts there appeared to have been some tension during the meeting.

Some concern was expressed by objectors about the rapidity with which the date of the hearing was set and notified once the date for submissions had expired, which would not have given much time for a pre-hearing meeting. Council advised the rapidity of the notice would have been to ensure that the required period of notice had been given so as to take advantage of an already scheduled Judicial Committee meeting.

An objector, speaking to the proposed conditions at the hearing, felt that not only was there was no effort at compromise by the proponent's advocate, but that his (the objector's) efforts to be constructive about his concerns were belittled.

Since the granting of the consent, the Council has proceeded with the project. However objectors do not consider that the conditions imposed have been complied with. This may be the result of a labour supervision problem but the Council should nevertheless have established on the ground, the areas to be protected, as defined in the forestry plan, and marked the planting and property boundaries. Protection of the vegetation in areas agreed to be retained, is part of the brief of the forestry consultant retained by Council and the CEO is satisfied this protection is occurring.

4.4.9 Additional feature of case

This case is difficult because the zoning of the two sections of land is so different. On Residential Conservation land, forestry is a non-complying activity while it is permitted on Rural B, although any necessary vegetation clearance on Rural B (Restricted), which part of the area is, is a discretionary activity. The City Planner's report noted the need for a consent for vegetation clearance but as the proponent had not sought such a consent this was not a matter the Judicial Committee could consider.

Council's intention, (in Ordinance 5.3.4(d)), when making vegetation clearing on land in the restricted category (with certain exceptions), a discretionary activity, was to control wholesale clearance of potentially erodible and unstable sites. It is

arguable whether clearing planting lines across the land should be considered vegetation clearance in terms of Ordinance 5.3.4(d) or not. However, because this matter was not able to be discussed further, this precluded any opportunity to consider the potential adverse environmental effects of the activity to be carried out on the Rural B (Restricted), land which the objectors had identified. The CEO does not believe clearing planting lines constitutes vegetation clearance for the purposes of the current District Plan. However, private individuals could presumably test that view by seeking an interim enforcement order, when the Council starts to clear planting lines on the Rural B (Restricted) land.

This case highlights a problem when an activity is permitted, and consequently no opportunity is provided to consider adverse environmental effects. Objectors raised concerns, but where no consent is required, a council is unable to impose mitigating conditions, or requirements to follow recognised codes of practice, for example in terms of forest management and harvesting. The current District Plan is not capable of providing the mechanisms to avoid or mitigate adverse environmental effects. This is something that needs to be considered in the review of the District Plan. For example Council could include appropriate conditions within the District Plan, or might review whether afforestation on restricted category land should be a controlled activity requiring consideration of its potential environmental effects.

A second problem is apparent in this case. Where there are two adjoining areas with different zoning but similar topographical, ecological and physical aspects, and these two areas are to be managed together as a single entity, there is an inconsistency if the controls and conditions imposed to avoid, remedy or mitigate adverse environmental effects on one area are not applied to the whole area to be managed. The District Plan review should address this problem.

4.5 Rural subdivision - Leonards Rd (350/62/419)

4.5.1 Introduction

This case involves a proposal to subdivide a 22.69 ha property held in two titles into six separate allotments.

The land is zoned Rural A for which the Transitional District plan rules provide for subdivision below 20 ha, as a discretionary activity, subject to the land being capable of being put to a 'productive use' and a range of other complying uses. The plan rules were inserted in the District Plan Review No 4 as a consequence of a Planning Tribunal hearing which required the introduction of more flexible subdivision rules in the zone. Before the hearing a minimum lot size of 20 ha prevailed, with the opportunity to subdivide into smaller lots only under special conditions. A more flexible discretion for smaller lots had existed in the previous Review No 3.

4.5.2 The application

The proponent's assessment of environmental effects listed the following:

- no visual change to landscape;
- no clearing of native trees or bush - it was envisaged that only noxious weeds and shrubs (gorse/blackberry) will be cleared to provide further pasture;
- no adverse effects on natural or physical resources;
- noise would be generated during the construction of driveways and dwellings but would be temporary;
- proposed house sites are some distance from watercourses, so flood hazard and the likelihood of water course contamination from household activities would be minimal;
- earthworks would be minimal and not pose an erosion risk;
- septic tank percolation studies were satisfactory; and
- hazardous substances or installations were not expected to be used or erected.

The application included discussion of the forms of activity approved for the zone which were being undertaken on similar land nearby. It was claimed that these examples were often more intensive uses of the land than the present owner was undertaking.

4.5.3 Consultation

The proponent reported that the subdivision proposal had been discussed with neighbours and that adjustments had been made in light of their comments. Details were provided of complying uses on small blocks in the area in support of the proposal and it was submitted the land would be better cared for, and can be more productively used in 4 - 5 ha blocks.

A full-time farmer in the area was critical of the fact that nobody had consulted them on the basis that subdivision into small units would have a detrimental effect on the viability of the full-time farms in the area, chiefly through the effect on land values impacting on rates. However the Council does have a differential rating policy which provides some rating relief to larger properties in rural zones.

4.5.4 Amelioration of environmental effects

There were no identified significant environmental effects and surrounding neighbours had given consent. The CEO has observed that "subdivision is a paper transaction which results in new and different titles being issued. The land itself is not affected by the act of subdivision ..." and consequently subdivision would satisfy the criteria in the Act (s 94(2)(a)) that the environmental effect would be minor.

It was apparent that the proponents of the application and their adviser were aware of the Planning Tribunal's interim decision relating to the subdivision of Rural A land in Upper Hutt. However they did not appear to have acknowledged the agreed amendments to the District Plan (to which the adviser was a party) that was produced later as a consequence of the interim decision. The application did not address some of the specific issues on which the amended Ordinances (5.2.5A(c)(ii) in particular) required information although subsequent submissions did deal with this.

4.5.5 Hearing

The application was not notified, because consents had been obtained from neighbours and near neighbours and it was considered the environmental effects were minor. The application was considered by the council's Development Co-ordination Committee. The initial meeting was adjourned because District Plan amendments required by the Planning Tribunal and confirmed some twelve months previously had not been incorporated in the District Plan documentation used by councillors. The eventual decision at a subsequent meeting to approve the subdivision was not unanimous and therefore the decision was submitted as a recommendation to the full council. The proponents felt they needed to be legally represented at the second committee meeting and the full council meeting.

The City Planner's report to the committee does not address the assessment requirements of the amended section (5.2.5A) of the Transitional Plan and comments only briefly on the information the proponent provided in accordance with the preceding section (5.2.5) of the Plan which deals with Rural A subdivisions in general.

4.5.6 Conditions of the consent

The council recognised the proponent's identification of an attractive bush remnant and imposed a condition that the approximately 1.4 ha native bush remnant be protected from clearance and this be subject of a consent notice registered against the title.

4.5.7 Expectations of the process

The proponent found the Fourth Schedule of the Act helpful as it helped direct thinking to the significant issues to be considered. If the proponent were to repeat the process they would look more closely at the community aspects of the subdivision and its effects on the district as a whole, not just the effects on immediate neighbours. The proponent and their consultant acknowledge the original application as lodged did not specifically address the need to establish that subdivision was necessary in order to carry out the proposed land uses. However subsequent submissions to Council described a range of activities occurring in the district which the proposed sections would be capable of being used for. The proponent noted that the RMA has taken the emphasis away from food production to a consideration of environmental effects. He felt that people, not the RMA were running the process and this resulted in additional costs and delays. The proponent agreed that there should be procedures which ensure that the self interests of proponents does not trample on the values of the community as a whole. However, those who oppose change should be subject to the same level of scrutiny and accountability.

A farming family opposed to the subdivision did use the public business period of the Development Co-ordination Committee meeting to express opposition to the subdivision. They believed the application should have been notified so they could express their views and perhaps influence the decision. They contend that they should have been consulted, as affected parties, on the basis the subdivision would break up a farm block into uneconomic units and would encourage the decline of full-time farming in the area. They had heard of the subdivision proposal informally and watched the local paper for notification of the meeting agenda. The council provided them with information on the application prior to the committee meeting. To this end farmers have successfully lobbied the council to provide a representative with agendas and notice of the meetings of the Development Co-ordination Committee.

One councillor commented to the full council in writing, regarding the committee's recommendation because he considered there was insufficient evidence for the committee to make a decision. In his view there was no information provided and no assessment by council staff against the criteria of the new amendment to the Provisional Plan.

4.5.8 Additional feature of case

This case was unusual in that it drew on an amendment of the Transitional District Plan required by the Planning Tribunal which allowed more flexibility in the subdivision of land in the Rural A Zone. Unfortunately the District Plan had not been amended to reflect the Tribunal's decision and it is not clear whether the councillors and staff were cognisant of the Judge's decision which included recommendations to council as to how it should consider cases of rural subdivision. This resulted in some hiatus at the first committee consideration of this application, and at a subsequent meeting a majority decision to grant the consent was made.

4.6 Rest home (350/62/042)

4.6.1 Introduction

This case involves a proposal to erect and operate a 40 bed old people's rest home in a Residential Conservation zone. The Transitional District Plan at the time of the application did not define a rest home and this form of use was not mentioned for the zone. Residential Conservation zone aims to provide for mainly single family dwellings at a relatively low density and provides for a restricted level of development appropriate to the special qualities of certain areas. The site coverage aspects of the proposal made it non-complying in terms of both the operative and proposed Plan.

4.6.2 Application

The proponent's assessment of environmental effects was prepared by themselves in accordance with UHCC RMA Information Sheet No 1, and advice from council staff which they found very helpful:

Landscape and visual effects - claimed that as the proposal was essentially for a large family home, to replace the existing dwelling, with extensively landscaped gardens no effect on the environment was foreseen.

Effects on the ecosystem - further landscaping to enhance the site's existing features would occur with replacement of the small number of mostly fruit trees which would need to be removed. This enhancement would therefore be positive.

Effect on neighbourhood and wider community - claimed to be an attractive building which would provide a service to the community in an environmentally compatible way, which proponents hoped would be viewed with pride by community.

No negative effects were identified.

4.6.3 Consultation

The proponents visited neighbours with an architect's drawings and plans. They felt there was no outright objection to the proposal. However as soon as neighbourhood residents appreciated the scale of the proposal they became concerned. Residents obtained detailed plans from the council and organised a residents meeting. When the proponent learnt there was more active opposition they asked to be able to speak at the meeting which residents of the neighbourhood had organised. This request was declined as the organisers wanted a free flowing discussion not constrained by peoples' relationships with, or the personality of, the proponents. They suggested that the proponents should arrange a meeting with residents to further explain their proposal, however this meeting did not eventuate,

although the proponent also offered to meet with objectors. There was no recognition by either the residents or the proponent of their right to seek a pre-hearing meeting.

In retrospect the proponents believe an appropriately facilitated pre-hearing meeting would have been a useful way to try to address the objectors' concerns.

4.6.4 Concerns raised

Objectors (34) raised the following issues:

- increased traffic, and parking problems;
- area does not suit commercial venture of this type and will reduce property values;
- the elderly would pose a traffic hazard;
- the proposal was not in harmony with the character of a residential conservation area;
- natural features would not be preserved - gardens provide feeding area for native birds, a corridor between areas and a breeding area for some species and some of trees are legally protected;
- potential noise from support services and visitors;
- unpleasant odours;
- loss of privacy;
- scale of the proposal (site coverage, number of residents) relative to the current norm for the area;
- loss of sunlight and view; and
- disturbance from night lighting.

The City Planner's report summarised the objections and noted requirements which could lead to mitigation of effects or bring the proposal within in the guidelines of the zone. One of the major issues was the scale of the proposal and its site coverage. The City Planner's report advised that the proposal would have a significant impact on the social and physical environment.

The planner was prepared to recommend approval of a 28-bed home with the quantity and position of trees and shrubs specified on a plan being retained or replaced, an increase in parking space, and a limit on night vehicle visits. However this was not acceptable to the proponents on economic grounds.

4.6.5 Hearing

The hearing involved the use of legal counsel and expert witnesses by both the applicants and the objectors. The proponents did not recall any distinction being made between effects and activities during discussion at the hearing.

The committee recommended the application be declined. This was accepted by the council on the basis that the scale of the proposal was such as to conflict with the objectives and policies of the residential conservation zone, it exceeded the site coverage permitted in the zone, and rest homes were not provided for in the zone.

4.6.6 District scheme review

Shortly after the hearing of the resource consent the proponents lodged an objection against the District Plan review, under the Town and Country Planning Act, seeking to permit rest homes in the Residential Conservation zone as a controlled use. They also sought a relaxation of the site coverage provisions of the zone. These two submissions brought over 70 counter-submissions, and both sides claimed the other side was "politicking". Also council elections occurred during the discussions on these issues. The Judicial Committee made recommendations to the council which were referred back to the committee twice and eventually the council disallowed both submissions.

This decision was also appealed by the proponents.

4.6.7 Appeal

The Planning Tribunal gave its decision on both appeals together as the Tribunal determined that they both related to the same subject matter.

The resource consent decision of the council was upheld by the Planning Tribunal which said "...Put simply, the proposal is too large."

The proponent was to appeal to the High Court but subsequently withdrew its appeal.

The appeal against the provisions of the District Plan did not allow the change sought in site coverage constraints but did allow inclusion of rest homes in a residential conservation zone as a conditional (discretionary) use.

4.6.8 Expectations of the process

The proponents would have appreciated brochures about the RMA and the various stages in obtaining a resource consent as at that time the Act had only recently been enacted. They noted that the City Planner had advised them that the application would be "difficult" as residents in the neighbourhood had resisted proposals for multi-unit development or commercial activities in the area.

The proponents also expressed the view that they believed that, regardless of the council's decision, there would have been a planning appeal and they felt it was considered such an appeal was less likely to come from them than from the

community group. In the event of the appeal, the neighbourhood residents felt the council was tardy in supporting its own decision and they, as residents, had to bear the costs and evidential burden which supported the council's decisions. The council may have believed it had lawfully made the best decisions, based on the information before it, and therefore had not been prepared to further develop supportive argument.

Both parties were disappointed in the proceedings. The proponents because the RMA did not appear to provide for dealing with psychological effects in terms of the proponent's perception of a "not in my back yard" neighbourhood bias against providing community based nursing care for the elderly. The objectors, who although recognising the drawing together of the local community, were frustrated by continuing application battles after they had thought they had won because the original resource consent had been declined.

The objectors also observed that there had been considerable cost which would have been difficult for an individual or even a small group to sustain. If the fight was with a corporation or multinational with ample funds to wear down any opposition no individual or small group could think of such action. "If you haven't got the money to fight then what's the point of the Act?" was one of their reactions.

5. SUMMARY OF KEY FINDINGS

Good practice

- 1 The Upper Hutt City 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. The information contained in the assessment of environmental effects is analysed and used in making decisions, and reasons are given with decisions.
- 2 The Development Co-ordination Committee inspects the site of every non notified consent application with planning department staff before considering the application.
- 3 The Council ensures consistent advice is given to the public through a single staff member being delegated to deal with counter enquiries.
- 4 The Council provides advice to possible resource consent applicants on whom to consult and includes the local iwi authority and the Royal Forest and Bird Protection Society, at their request, as parties with whom consultation should be considered.
- 5 Council planning staff do not accept "no environmental effects" statements without corroborating evidence.
- 6 Staff reports on consent applications pass through an office confirmation and approval process which includes sighting by the departmental director.
- 7 Council has budgeted to provide for consultants to be employed to assist staff when the appropriate technical expertise is not available within the council.

Recommendations for improvement

- Pre-hearing meetings are not a feature of the resource consent process in Upper Hutt. Several cases were sighted where such a meeting, if properly facilitated, may have assisted the parties to reach outcomes with "win/win" results.
 - 1 The Council should encourage the concept of pre-hearing meetings with applicants and objectors, and indeed take the initiative in organising such meetings when a proposal may attract controversy.

The quality of AEEs varies considerably. In some cases Council staff when assessing the AEE had considerably expanded on the information the applicant had provided. The Council should not find it necessary to undertake its own research to cover inadequacies in an applicant's assessment.

- 2 Council provides applicants and the public with documentation which provides: criteria for, and guidance in, the preparation of appropriate AEE; an understanding of the purpose of consultation and its recurring nature; criteria for identifying whom to consult; an outline of the responsibilities and rights of both an applicant and affected parties when the applicant seeks approval for their proposal from affected parties; and a summary of the resource consent procedure.
 - 3 Council staff should be more critical of the quality of information provided by an applicant in their AEE and use the provisions of s 92 of the RMA to greater effect. The preparation of guidelines for staff when assessing the adequacy of an AEE would assist.
- Public understanding of the Council's efforts to provide transparent decision making on its own consent applications is confused. This occurs when staff identified as Council Planning Officers appear at a hearing as an advocate for the Council proposal, despite procedures in place to ensure the separation within the office of those involved as consent authority staff and those acting for the Council as proponent.
- 4 When Council Planning Department staff assist another department with its resource consent to the Council, such staff should be identified as a planning consultant to Department "X" not by their Planning Department title.
- Decisions as to who are affected parties, whether the environmental effects are minor and whether to notify or not notify a resource consent application are made by a senior staff member on the basis of experience and staff advice. There are no formal criteria to assist these decisions and maintain consistency.
- 5 Council should define some criteria for: identifying who are affected parties; deciding whether the environmental effects are minor; and, guiding the decision whether to or not to notify a resource consent application.

- In the absence of a fully developed iwi consultation protocol Council's understanding of iwi concerns is likely to be incomplete.

6 The Council and the local iwi authority should together work with renewed vigour to develop a consultative relationship which benefits both sides.

- Council records indicate that 100% of notified consents (5) have attracted submissions. This is in contrast with the other councils studied where only 50 - 60% of notified applications attracted submissions. While the sample size is small, there is a possibility the high submission rate is indicative of a higher degree of public interest and concern than the Council is assessing. Therefore a more precautionary approach to the decision to not notify an application may be justified. This will result in more notified consent applications and provide more opportunities for community involvement in environmental decision making.

7 Council should adopt a more precautionary approach before deciding not to notify a consent application.

APPENDIX: PERSONS CONSULTED

The following people assisted the investigation by providing oral and/or written information and answering questions either in face to face discussion or by telephone. Others were invited to participate but chose not to be involved.

Upper Hutt City Council

Mr R Kirton, Mayor
 Cr S Russell, Chair Development Co-ordination Committee
 Cr P Christianson, Chair Judicial Committee
 Cr H Kent, Development Co-ordination and Judicial Committees
 Mr M Pedersen, Chief Executive
 Mr G Birkenshaw, City Planner
 Mr S Kerr, Senior Planner
 Ms D Hogan, Planning Officer
 Mr B Dodson, City Solicitor
 Mr L Wallach, Director Operations and Development

Other agencies and organisations

Mr D Armour, Wellington Regional Council
 Mr D Burt, (HO) Royal Forest and Bird Protection Society (RFBPS)
 Mrs P Baty, Secretary, Upper Hutt Branch of the RFBPS
 Mr T Puketapu, Te Runanganui o Taranaki Whanui ki te Upopo o Te
 Ika a Maui

Applicants and advisers

Mr P Claydon
 Mr & Mrs B Johnson
 Mr R Lendrum
 Mr J Scott

Other submitters

Mrs N Birkett
 Mrs C Flitcroft
 Mr K Davis
 Mr B Dinan
 Mr & Mrs M Edwards
 Mr M Marsters
 Mr M Mears

