



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

*Through the Resource Management Act 1991 Parliament has given local government the role of being the principal public managers of the New Zealand environment. This local authority management is being investigated in a series of case studies. It is hoped that the results of these investigations will be of use to councils in improving practice and to Parliament and the public in monitoring environmental management performance.*

*This pamphlet summarises the Commissioner's findings from investigating the administration of the assessment of environmental effects by three territorial authorities: Waipa and Marlborough District Councils and Upper Hutt City Council. The findings from only fifteen detailed resource consent examples should be taken as indicative of trends rather than fully representative of territorial authority experience.*

Office of the  
**PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT**  
Te Kaitiaki Taiao a Te Whare Pāremata  
PO Box 10-241, Wellington

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# SUMMARY OF FINDINGS

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## **Council response to RMA challenge**

*The Councils have responded well.* Assessment of environmental effects (AEE) as a requirement for all consent applications was a new concept for local government created by the Resource Management Act (RMA). Since 1991 the councils studied:

- have implemented effective processes for managing their statutory obligations;
- use AEE information in deciding whether to notify applications;
- cite AEE information in reasons for their decisions;
- use the Fourth Schedule appropriately to request and assess AEE information (in keeping with the scale and significance of the proposal); and
- have, despite heavy workloads, provided AEE analysis and consent decisions of adequate to very good quality, reflecting a genuine concern to balance development and environmental protection.

## **Public understanding**

*Public understanding of RMA and good AEE practice is inadequate.* Although some community groups are well informed about the RMA and the importance of good AEE practice, this cannot be said about the general public and many resource consent applicants.

## **Assessment of environmental effects by applicants**

*AEE by applicants needs improvement.* The councils studied are receiving a significant number of applications (37% to approx 50%) without adequate AEE information. Genuine consultation with affected parties is rarely used as an ongoing process to identify adverse effects and design good mitigation measures for them.

All three councils studied provide a copy of the Fourth Schedule of the RMA with the application form, but it is a general guide only and does not help identify key issues and parties affected by the proposed activity. Specific guidelines for the preparation of AEE for different types of consent application would assist applicants.

## **Written approvals from affected parties**

*Councils need to ensure that written approvals by affected parties are based on full information.* Provision for affected parties to give written approval of resource consent applications is a new option created by the RMA. Unfortunately there is evidence that some applicants are not adequately informing affected parties, of potential effects. It is important that affected parties have sighted and understood an adequate plan and AEE information before deciding whether to sign their approval.

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*The potential to clarify issues and resolve conflict through pre-hearing meetings has not been adequately realised.* Only one of the three councils studied actively encouraged pre-hearing meetings. This council found it a useful mechanism but also that statutory time frames prevent it from holding pre-hearing meetings more often.

## **Pre-hearing meetings**

*Evaluation of AEEs could be improved.* In staff reports on applications, assessment of compliance with district plans is usually very well covered. However, special skills are required to check the adequacy of applicants' assessments of ecological and cumulative effects, and the impact on communities from such adverse effects as noise and odour. If a council does not have specific expertise, it can commission reports to assist its assessment of the AEE; however, only one of the three councils in the study used this option regularly.

## **Council evaluation of applicants' AEE**

*Monitoring must be adequately resourced.* Conditions attached to consents generally appear to be a fair response to the concerns of affected parties, and sustainable management requirements. But council ability to effectively monitor and enforce the conditions has been in doubt over the period 1991-1994. Pressure from statutory time frames and consent and district planning workloads has resulted in monitoring and enforcement having low priority and being carried out in an ad hoc way, usually in response to complaints.

## **Monitoring and enforcement**

Two of the three councils studied have recently hired staff specifically for monitoring and enforcement, and one of the councils sometimes includes a monitoring programme, with annual monitoring fees, as a condition of consent. The adequacy of such initiatives will need to be monitored by councils.

### *Councils need to ensure that iwi concerns are understood.*

The RMA does not require an applicant to consult with tangata whenua or any other affected party, but a council, as consent authority, has a duty to understand the concerns of tangata whenua so as to make informed decisions. One of the three councils studied has developed a good interim "safety net" procedure which ensures that the consent authority is aware of iwi concerns before it decides on consents, with costs partially paid from rates and consent fees. This council also uses statutory powers to good effect to encourage consultation between applicant and iwi to clarify iwi-related project-specific concerns.

## **Understanding iwi concerns**

# Basic good practice criteria for assessment of environmental effects

## ***APPLICANT***

**1 Give early attention to adverse effects, risk assessment, and identification of affected parties (ie scoping).**

It is essential to understand early what the most significant effects and risks of the proposal are likely to be and the full range of parties likely to be affected. Effective contingency plans are required for risks of adverse effect. Assessment of environmental effects (AEE) documents should be consistent with the scale and significance of environmental effects. (s 88(6)(a) RMA).

**2 Prepare AEE in consultation with affected parties BEFORE plans are finalised.**

It is important to be able to incorporate effective prevention, remedy, or mitigation of adverse effects into project plans. This means early consultation when there are still options open, such as alternative sites, layout on sites, and designs. Good AEE practice is *iterative*, involving repeated communication between the applicant and the affected parties as the AEE and the project plans evolve.

## ***CONSENT AUTHORITY***

**1 Give clear guidance to applicants on council's AEE requirements.**

This may be provided with the resource consent application forms and/or through District and Regional Plans.

**2 Apply effective means of checking accuracy of AEE and adequacy of consultation.**

Applicants will naturally emphasise the positive aspects of their proposed activity, but a balanced assessment is required by decision-makers. Staff expertise will not cover all technical issues, and an independent assessment may need to be commissioned. Reliance on public submissions may not be sufficient as not all interested parties may sight the notification or have the time or skills to present their concerns in writing. Nor will they be involved with non-notified applications.

**3 Explain fully the reasons for decisions.**

If the recommendations of applicant, affected parties, or staff who have analysed AEE are not agreed with, reasons should be stated in writing.

**4 Use pre-hearing meetings to clarify issues and if possible resolve conflict.**

**5 Apply monitoring and consent review programmes to ensure avoidance or mitigation of adverse effects.**

The ability of consent conditions to mitigate adverse environmental effects needs to be continually monitored and reviewed by councils.