

INFORMATION NEEDS OF THE RMA

A Review of the Information used for Discharge Permit Applications

Office of the
Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Paremata

PO Box 10-241, Wellington NEW ZEALAND

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PREFACE

The end of the 20th century has been **characterised** by access to an explosion of information, along with the tools and technologies to apply it to decision making in all spheres of human activity. No organisation, public or private, can operate in an **efficient**, effective, financially viable, environmentally sustainable manner without having the capability to utilise a wide range of increasingly complex information. The successful organisations of today, and increasingly into the 21 st century, will be those that are information rich and able to use that information efficiently to meet their objectives.

While New Zealand businesses accept the need to invest in acquiring information and knowledge to advance their product or service development, and understand their markets, there does not always seem to be the same level of recognition of the need to have good quality information/data on the natural resources/environments their business activities may impact on.

The pre RMA era, when the focus was on prescribing use (eg of land) rather than the effects of use, was one that did not require as much to be known about ecological functionings, environmental impacts etc. The RMA of course dramatically changed the focus. An “effects based” approach to environmental management necessitates knowing a lot more about the ecological systems being interacted with if sound judgements are to be made about effects. This need for better knowledge of resources, and therefore better judgement of effects, has led to complaints about the information requirements of the RMA and the efficiency of use, by local government, of the information supplied or sought in the resource consenting process. The RMA has been called “information hungry”.

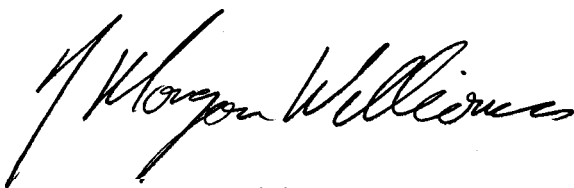
This investigation set out to assess the validity of the “information hungry” accusations by examining 16 resource consents for discharges to water issued by three regional councils.

All aspects of the consent application and assessment process were examined to assess the adequacy of information provided, and sought, to make sound resource consent decisions as well as the proportion of information used in the decision making. The latter aspect was an endeavour to assess the efficiency with which information was used; ie, was more being sought than necessary to make a sound decision?

The adequacy of information supplied with consent applications varied considerably, with those for large projects usually meeting all or most requirements. However, the majority of the applications had information gaps necessitating the councils informally or formally, per a section 92 request, seeking additional information. Consents for new discharge permits required more extensive information regarding effects than did replacement consents. Examination of the councils’ reports and recommendations relating to these 16 consents indicated that decision makers are using all information provided or sought in making their decisions. Therefore, in these examples of resource

consents for discharges to freshwater, the contention that the RMA is “information hungry” was not substantiated.

Although this finding is based on a relatively small sample of consents for one area of consent activity in three councils, it is not unexpected given the pressure local authorities have been under to be efficient with their resource consent information requirements and the widespread misconceptions about the information needs of an effects based approach to resource management. The business of efficiently and effectively sustaining the life supporting capacities of our land- and water-based ecosystems requires quality information and ongoing enhancement of knowledge of effects. In reality, it is little different from the information needs to maintain the fiscal health of public and private businesses. The big difference is that many New Zealand businesses are only slowly beginning to understand the similarity between economic and environmental “balance sheets”. Nevertheless, understanding is growing, particularly amongst international companies operating in New Zealand who, despite media rhetoric, tend to view the RMA as a competitive advantage. Hopefully this investigation will add to the substance of debate regarding RMA information requirements and in doing so foster focus on the competitive advantage of efficient resource use and good management of environmental effects.

A handwritten signature in black ink, reading 'J Morgan Williams'. The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Dr J Morgan Williams
Parliamentary Commissioner for the Environment

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1. INTRODUCTION

1.1 Background

This investigation is fifth in a series of local authority reviews being undertaken by the Parliamentary Commissioner for the Environment (**PCE**) under s 16(l)(b) of the Environment Act 1986. The purpose of the reviews is to examine the environmental management of local authorities and to report on good practice.¹

The information requirements of the Resource Management Act 1991 (**RMA**) have been described as being onerous on local government and people who apply for resource consents. Some people within the business community have complained about the costs of producing information for consent applications.* This description is understandable as the legislation has changed **from** a previous emphasis on activities (and their impacts) to considering the environmental effects of activities within the overall purpose of promoting sustainable management of natural and physical resources.

The administration of the RMA is still in a transition phase as many councils have yet to develop effects-based rules that will give the certainty that the participants in the resource consent process desire. Because of this lack of effects-based rules in many situations, councils are having to consider effects on a case by case basis. The information requirements of the RMA resource consent process are more complex than previous legislative requirements given the definition of effects (s 3 RMA). It is believed that this change in information needs is not widely appreciated nor is it widely understood.

Some examples of the effects on surface water quality that can occur are:

- ✧ nutrients (nitrogen or phosphorus) in sewage discharges can lead to **fungus** growths in a river thus affecting aquatic species' habitats;
- ✧ **faecal** coliforms in sewage or animal wastes can **affect** downstream water users for contact recreation (eg swimming) or water supply (public health effects);
- ✧ sediment/soil as a component of stormwater can cause increases in water turbidity. This can **affect** aquatic species and their habitat;
- ✧ the discharge of sewage into a river, no matter how well the sewage is treated, is contrary to tangata whenua cultural and spiritual values.

The purpose of the RMA is to promote the sustainable management of the natural and physical environment. This differs from the purpose of the Town and Country Planning Act 1977 which focused on the wise use and management of resources, and the direction and control of development. Local government is now required to produce policies and plans to promote sustainable management and they can assess only whether a particular proposed activity will be consistent with a philosophy of

¹ Previous reviews were: *Assessment of Environmental Effects (AEE) Administration by three territorial authorities (1995)*; *Coastal Management Preserving the natural character of the coastal environment. Administration by Far North, Tauranga and Wanganui District Councils (1996)*; *Administration of Compliance with Resource Consents - report of an investigation of three councils (1996)*; *The Management of Suburban Amenity Values Administration by Auckland, Christchurch and Waitakere City Councils (1997)*

² Dormer, A. 1994. *The Resource Management Act 1991: The Transition and Business.*

sustainable management by reference to information about the particular environment and the likely effects on the environment.

This investigation has stemmed **from** concerns expressed to the PCE by individuals, community groups and local government about various aspects of information requirements, especially during the conduct of the PCE's local government reviews. Examples included:

- ≈ a concern that a council was asking for more information than was strictly necessary in order to process a resource consent application;
- ≈ community groups' concerns that information on the effects of proposed activities on their community was being excluded from the decision making process.

Anecdotal information in the public arena suggests that the **RMA's** information requirements are sometimes perceived as unreasonable.

The PCE has identified the provision of information for environmental management as one of the significant areas in his strategic plan *Future Directions* (1997).³ This review also relates to a critical issue in the PCE's *Departmental Forecast Report 1997* of the ability of tangata whenua and other interested parties to participate effectively in environmental management processes.

1.2 Discussion paper and key issues

Such concerns about the information requirements of the RMA prompted the former Commissioner to circulate a discussion paper *Information and the Resource Management Act* in December 1996 to local authorities and some selected crown agencies (paper included as appendix 1).

The paper observed that promoting sustainable management requires a knowledge of resources, the interactions between resources, the effects of activities on those resources and the changes taking place in the resources and within the ecosystems supporting the resources.

“We understand the need for flows of advanced and detailed information in efficiently managing modern business. We do not as yet appear to understand the need for similar flows of advanced and detailed information to achieve sustainable management of natural resources.”

The discussion paper questioned:

- ≈ whether access to information had become increasingly **difficult** as a consequence of the reorganisation of central government administration;
- ≈ the effects of the dispersal of important resource information databases;
- ≈ the effects of the introduction of cost recovery for services previously provided without charge;
- ≈ whether local authorities were efficient in collecting and managing information required for policy statements, plans and consent application processing; and

³ Parliamentary Commissioner for the Environment 1997. *Future Directions*. Strategic focus for the Parliamentary Commissioner for the Environment 1997-2001.

whether central government was adequately compensating local government for costs incurred in the provision of information required for national public good purposes.

Fifty-two responses were received to the invitation for submissions; 31 of these were provided by local government organisations. While there was general agreement that significant costs were incurred in obtaining public good information for RMA administration, views diverged on the contribution central government should make to meeting these costs.

Key issues raised in the responses to the discussion paper included:

- the need for a clear understanding of information requirements;
- the quality of information collection, processing and storage systems;
- cooperative arrangements for gathering and obtaining access to information; and
- the capability of local authorities to interpret and apply scientific information.

An analysis of the responses to the discussion paper and the issues raised is included as appendix 2. A scoping process to decide on one of the key issues for further investigation was undertaken by the PCE during 1997 after consultation with some key stakeholders. The Commissioner decided to review the need for a clear understanding of the information requirements of the RMA in relation to the application for and granting of resource consents.

As with previous local authority reviews by the Parliamentary Commissioner for Environment, three local authorities were chosen for case study purposes. The category of resource consents for discharges of water or wastewater to water was chosen for the review as there is a considerable body of information on New Zealand's water resources that has been used and added to over many years by catchment boards and their successor organisations, regional councils.

1.3 Terms of reference

The purpose of this investigation is:

1. to review the extent to which the information supplied by a resource consent applicant together with other relevant consent authority information is:
 - reviewed and reported to assist the authority's decision maker(s); and
 - reflected in the decision on a consent application;
2. to draw attention to examples of good practice in relation to information requirements as an aid to environmental management decision making.

It is not the intention of this review to comment on the adequacy of decision making nor is it to review the environmental outcomes of the decision making process. The analysis of the case study resource consents has not identified the council or the area. Good practice ideas have been highlighted, including some practice ideas from the reviewers of this report.

The terms of reference are:

1. To review the manner in which information in the assessment of environmental effects for discharge permits is reported and used in resource consent decision processes of three regional councils.
2. To identify areas of good practice with respect to the information needs of discharge permits, and to provide advice if appropriate.
3. To report on the outcome of the investigation by August 1998 and also in the Parliamentary Commissioner for Environment's annual report to Parliament for the year ending 30 June 1998.

The criteria that were used for assessing the information requirements and use of the information by the councils is in appendix 3.

1.4 Section summary

Section 2 outlines the legal requirements for information to be supplied by an applicant for a resource consent, and what information should be considered by the consent authority in making its decision.

Section 3 summarises the resource consents chosen from Southland, Waikato and West Coast Regional Councils.

Section 4 outlines the information given in the resource consent application on the nature of the activity, the nature of the effects on the environment and the mitigation measures proposed by the applicant.

Section 5 outlines the information used in the decision making procedures of the regional councils. This includes information supplied by the applicant, the submitters and the regional council in order to assist the decision makers.

Section 6 presents the findings of the investigation.

Section 7 outlines the good practice found by the PCE.

2. LEGISLATIVE INFORMATION REQUIREMENTS

Some of the decisions as to the information requirements of processes under the RMA are made in the context of preparing regional and district plans. Sections 67(1)(t) and 75(1)(f) require that regional and district plans respectively should state “the information to be submitted with an application for a resource consent, including the circumstances in which the powers under s 92 may be used”.

In the case of a private request for a plan change, the information to be supplied by the person seeking the change is similar to that required of an applicant for consent (First Schedule RMA, cls 22 and 23).

2.1 Assessment of environmental effects⁴

Section 88(4)(b) of the RMA requires an applicant for a consent to include with the application an assessment of the environmental effects of the activity and a statement as to how any adverse environmental effects may be mitigated. This assessment of environmental effects (AEE) is to be prepared in accordance with the Fourth Schedule to the RMA and “shall be in such detail as corresponds with the scale and significance of the actual or potential effects” of the activity on the environment (s 88(6)). (The Fourth Schedule to the Act lists matters which should be included and those which should be considered in the AEE where they are relevant to the activity for which consent is sought.)

Where the application relates to a controlled or restricted discretionary activity, the AEE should address only those matters “over which the local authority has retained control or to which the local authority has restricted the right to exercise its discretion (s 88(5))”.

The AEE should contain sufficient particulars to enable the functions that depend on it to be performed and for submitters to be able to assess the effects on the environment and on their own interests of the proposed **activity**.⁵ Section 88(4)(b) is not a jurisdictional section, that is, if the applicant fails to provide all the information it should, the local authority may proceed with consideration of the application. However, the applicant must comply with s 88(4)(b) to a reasonable extent or the local authority may either decline the application or seek more information from the applicant under s 92.⁶

⁴ The Ministry for the Environment is preparing guidelines on AEE preparation and auditing.

⁵ *AFFCO NZ Ltd v Far North District Council (No 2)* (1994) NZRMA 224,234.

⁶ *McFarland v Napier City Council* (1993) 2 NZRMA 440.

2.2 Requests for further information

Section 92 empowers a consent authority to require the applicant to provide further information relating to the application for consent. Such further information may be required only if the information is necessary for the consent authority to better understand the nature of the activity for which consent is sought, the effects of the activity on the environment, or the ways in which the adverse effects may be mitigated (s 92(4)).

The Act provides some guidance on the type of information that a consent authority may require in particular circumstances or in respect of specific types of activity (s 92(2)). In particular, where the consent authority is of the view that any significant effects on the environment may result from an activity, the consent authority may commission a report on any matters raised in relation to the application for consent, including a review of any information provided as part of the application or provided under s 92 (s 92(2)(c)). An applicant for a consent has the right to object to a consent authority's request for further information and, if the consent authority does not uphold the objection, the applicant may appeal that decision to the Environment Court (s 92(5)).

The RMA does not prescribe the form and content of the consent authority's request for further information **from** the applicant, although the request must be in writing. It is not necessary for the consent authority to include reference to s 92 or advice of the applicant's right to object to the consent authority's request (although this may be advisable in some circumstances). The consent authority has the discretion to decide what level of formality is appropriate and what information should be included in the request in the particular circumstances. Where the consent authority considers that the further information may not be provided within a reasonable time by the applicant, it may be appropriate to ensure that the applicant is apprised of the consequences of any delay, namely that the consent authority may not be able to complete the processing of the application, or may cancel the request for further information and **refuse** the consent application.⁷

Information may be sought by the consent authority at any stage up to a reasonable time before the hearing if there is to be one, or the decision if there is no hearing (s 92(1)). Hearings may be adjourned so further information can be sought (ss 39 & 41(4)). The information requested, combined with the information contained in the AEE, may assist the consent authority in determining whether the application should be notified under s 93, or need not be notified in accordance with s 94. The information may also enable the consent authority to identify any special circumstances that might warrant notification of the application even though s 94 applies.

The decision to notify an application or not is an administrative decision of the consent authority and may be challenged only through judicial review proceedings in the High court.

⁷

As an administrative decision rather than a quasi-judicial one, a council may reconsider its decision to seek further information **from** an applicant: *Australasian Conference Assn v Auckland City Council* (1992) 2 NZRMA 104. Section 21 **RMA** requires persons required to do something under the **RMA** to act as promptly as is reasonable in the circumstances.

If an application is notified, there is an opportunity for any person to make a written submission to the consent authority (s 96). A submission should state the reasons for making the submission, the decision that the submitter wishes the consent authority to make (if possible), and the general nature of any conditions sought (s 96(2)(a)).

2.3 Decision making on resource consent applications

In coming to a decision on an application, the consent authority must consider the application and all the submissions and have regard to the matters set out in s 104. The matters a consent authority may consider are not limited by the Act except to the extent that:

1. it may not consider the effects on any person who has given written approval to the proposal (s 104(6)), unless that person withdraws their approval before the date of the hearing (if there is one) or before the consent authority has made its decision (if there is no hearing) (s 104(7));
2. it must not have regard to trade competition (s 104(8));
3. matters must be relevant and consideration of matters not listed in (s 104(l)(a)-(h)) must be reasonably necessary to the determination of the application (s 104(l)(i)).

Before the 1993 amendment of the RMA, consent authorities were required to have regard to Part II, which was placed on an equal footing with the other matters listed in s 104(1). The amendment made s 104(1) “subject to Part II”, raising the status of Part II *vis à vis* the other matters listed. Part II of the RMA states the purpose and principles of the Act and the various matters which are to be considered when managing the use, development and protection of natural and physical resources. These matters include taking into account the principles of the Treaty of Waitangi.

Since section 104(1) is subject to Part II, the terms of Part II must be considered in coming to a decision under s 105 and, insofar as any matter in s 104(1) is contrary to Part II, that matter should be excluded from consideration.* However, Part II serves more than just a conflict resolution role. In *Application by Canterbury Regional Council*,⁹ the Tribunal noted that:

“The exercise of those discretionary judgments (under s 105 and s 108) must be made for, and informed by, the statutory purpose described in s 5 and elaborated in the succeeding sections of Part II. So the function of a regional council as a consent authority to hear and decide a resource consent application made to it cannot be performed independently of Part II.”

Section 104(3) specifies matters to be considered in relation to applications for discharge permits and s 107 imposes additional restrictions on the grant of discharge permits.

Officers of the consent authority or consultants or other persons may provide the consent authority with a report on any matter referred to in s 39(1) (ie proposed policy

⁸ *Paihia & Citizens' Assn Inc v Northland Regional Council* A77/95; *Application by Canterbury Regional Council* [1997] NZRMA 110.
⁹ [1995] NZRMA 110, 126.

statements, plans and applications of various kinds) (s 42A). Any report that is prepared may be considered at a hearing and should be made available to the applicant and any submitters who wish to be heard at least five working days before the hearing (s 42A(3)). While there is no statutory obligation on the consent authority to ensure that an officer's report is prepared, it is good practice to do so, and is a widely practised process.

In an earlier report, the PCE commented on the officers' reports reviewed:"

"All consent hearings use as their basis a staff planner's report, which normally includes sections on statutory and planning framework, confirmation of consents from adversely affected parties if not notified, or listing and summary of submissions if notified, an evaluation of the application and AEE, and a conclusion, which may or may not include a recommended decision and set of conditions. Planners' reports in the three councils studied followed a format. Attached to the planner's report are the application and supporting material, as well as copies of all submissions. The planner's report is thus the most important source of information for decision-makers on resource consents."

And later in the same report:"

"The full evaluation of AEE information provided by applicants is one of the most critical aspects of the entire resource consent process. The applicant is responsible for providing a full assessment of the proposed activity, but such responsibility is meaningless unless a council provides guidance, and where necessary, forms judgements on the adequacy of the assessment."

The information provided to the consent authority through the various avenues referred to above should all be considered by the consent authority in coming to its decision on notification, its decision to grant or refuse consent and, if consent is granted, to its decision as to what conditions should be attached to the consent under s 108.

¹⁰ Parliamentary Commissioner for the Environment *Environmental Management by Local Authorities under the Resource Management Act 1991 -Assessment of Environmental Effects (AEE): Administration by Three Territorial Authorities* August 1995, 39.

¹¹ Above note 9 at 4 1.

3. SUMMARY OF RESOURCE CONSENTS

3.1 Case study selection

Water is a natural physical resource for which there is a considerable body of information on measures of quality and the effects of abstraction and/or discharges. Water is an important community resource and local authorities have, or are, accumulating information to assist the sustainable management of the resource. Water is also important to tangata whenua, because it is central to Maori culture and spirituality. In addition, lakes and rivers have been an important food source for tangata whenua.

Responsibility for control of discharges of contaminants or water into water is vested in regional councils and unitary authorities. New Zealand's 16 regional and unitary authorities have a considerable range of institutional resources as might be anticipated from the range of population sizes they serve from nearly one million down to 35,000 people.

The selection of councils for case study purposes was to ensure that the three councils were representative of

- ⌘ a range of institutional resources; and
- ⌘ a range of water quality issues.

The councils chosen were Environment Waikato, Southland and West Coast Regional Councils. Each council was asked to **identify** a number of discharge to water resource consent applications. From the range of resource consents made available to the investigation team, a selection was made to reflect a range of activities where:

- ⌘ there was a high level of public concern for the environmental impact of the proposed activity; or
- ⌘ the effects on the environment of the proposed activity were minor; or
- ⌘ the effects on the environment were more than minor; or
- ⌘ the proposed activity was complex with potential for significant effects on the environment.

The information examined on each selected consent application file included:

- ⌘ the description of the proposed activity;
- ⌘ the nature of the effluent;
- ⌘ the nature of the receiving water;
- ⌘ mitigation proposals for adverse effects;
- ⌘ officer reports on the discharge permit application; and
- ⌘ reports and minutes of council decision making processes.

It should be noted that several of the selected case study applications were ones where the proposed activity required resource consents from a territorial local authority for land use as well as discharge permits from the regional council. This review has assessed only the discharge permit applications in these instances. Where the regional

and territorial local authorities held joint hearings for the proposed activity, this review has examined only the report of the regional council decision maker.

The consents ranged from proposed activities with very minor effects on the environment eg a farm quarry, to one involving a complex “greenfields” development. At least one case study that had required an extensive set of information on the proposed activity and the receiving water environment was selected from each council, and a number of consent applications for similar types of activity were sought from each council.

The sample of resource consents also contained a mix of notified and non-notified consents and a mix of new applications and replacement consents. All but one of the applications examined were granted by the consent authority with conditions relating to the exercise of the consent.

Thirty six consent applications for the proposed large gold mine were considered by the regional and district councils in 1994. One of these consent applications, the discharge of treated mine wastewater to an infiltration basin, was declined because insufficient information had been supplied. The decision maker outlined the information that would be required before it was possible to grant the consents. The applicant subsequently applied for two consents - one for discharge of the treated mine wastewater to a river and one for discharge to an infiltration basin. This review examined only these two applications.

3.2 Methodology for the review

A total of five consent applications from each of two councils and six consent applications from the third council was selected by the investigation team from a range of discharge permits that were made available. Consent applications that were not subject to appeal were selected because otherwise the information flow to the decision maker, (in this case the Environment Court) may not have been complete at the time of the investigation. The review team wanted to examine the council’s decision making process because most decisions are made at the council level rather than by the Environment Court.

The investigation team visited each regional council and viewed each of the files relating to the 16 resource consent applications. Relevant information was copied for subsequent analysis of the information flows throughout the processing and decision making phases for these resource consents. In addition, the consents manager of each council was interviewed regarding the council’s policies and practices in information management in relation to resource consent processing. The investigation team assessed the adequacy of the information given and used in the resource consent processing and checked back with each council as to the accuracy of these assessments.

3.3 Resource consent descriptions

Tables 3.1 and 3.2 summarise the resource consents that were analysed and the manner in which the applications were processed by the councils.

The information requirements of an application are related to the manner in which the application will be processed. Within this sample of 16 consent applications, there were four where effects on the environment would clearly be minor. For these cases, the information requirements outlined the way in which mitigation measures would ensure the effects remained minor. For example, an application for stormwater discharge to a tributary required information on the stormwater flow **from** the activity area and information on the design of the stormwater detention pond that would be installed.

The information required for those consent applications that were notified ranged **from** an assessment of the effects of a discharge on some regionally significant vegetation to more complex information on the effects of potentially hazardous mine wastewater constituents on a sensitive receiving water.

TABLE 3.1 DESCRIPTION OF RESOURCE CONSENTS

Proposed Activity	New Consent or Replacement	Effluent	Quantity	Receiving Environment
Small coal mine	Replacement	Treated stormwater	Up to 2600 m ³ /day (previous consent)	Small creek
Dairy shed	Replacement	Treated dairy shed effluent **	From no more than 150 cows	Creek
Sewage treatment upgrade	Replacement	Treated sewage	Up to 25,000 m ³ /day	Large river
Saleyards	Replacement	Stormwater and yardwash effluent	Up to 5 m ³ /day	Unnamed tributary
Large coal mine	Replacement	Treated mine wastewater and stormwater	Up to 20,000 m ³ /day	Stream
Large rural industry	New	Treated waste process water **	Up to 611 m ³ /day	Large river
Truckwash	New	Treated truckwash water	9m ³ /day	Small stream
Dairy shed	Replacement	Treated dairy shed effluent	13.5 m ³ /day	Stream
Farm quarry	New	Settled stormwater	70 l/sec	Unnamed tributary
Small rural industry	Replacement	Waste geothermal fluid, process water, washdown water	up to 2000 m ³ /day	Large river
Sewage treatment upgrade	Replacement	Treated sewage	up to 6000 m ³ /day	Stream (minimum dilution 5: 1)
Tourism development	New	Treated sewage effluent/ stormwater	Up to 56m ³ /day	River
Alluvial mining	New (prospecting previously on site)	Stormwater	288m ³ /day Intermittent discharge	Creek
Coal processing	New	Treated coal processing water	100m ³ /day Intermittent discharge	Creek
Dairy shed	New	Treated dairy shed effluent 200 cows	14m ³ /day Intermittent discharge	Creek adjacent to large river
Large gold mine	New	Treated mine waste water	120 l/sec	River

Note:

*

Replacement. A new consent for the same or similar activity.

**

The discharge to water is required for times (generally during winter months) when full land disposal of the effluent is not practicable.

TABLE 3.2: PROCESSING OF RESOURCE CONSENTS

Proposed Activity	Notified	Submissions	Pre-hearing meeting
Small coal mine	No	N/A	N/A
Dairy shed	Yes	5	Yes
Sewage treatment upgrade	Yes	4	Yes
Saleyards	Yes	4	Yes
Large coal mine	Yes	2	Yes
Large rural industry	Yes	74** (39 concerned discharge to water)	Yes
Truckwash	No	N/A	N/A
Dairy shed	Yes	2	Yes
Farm quarry	No	N/A	N/A
Rural industry	Yes	None	N/A
Sewage treatment upgrade	Yes	3	Yes
Tourism development	Yes	39**	Yes
Alluvial gold mine	Yes	16	N.D *
Cpal processing	Yes	64***	Yes
Dairy shed	Yes	N/A	N/A
Large gold mine	Yes	7	No

*

Not documented in the resource consent file

**

These included issues other than discharge to water. The number of concerns related to discharge permits for the tourism development was not clear.

Most of the concerns were about noise and dust, very few about the discharge to water.

3.4 Resource consent workload

In order to set the sample of 16 resource consent applications in the context of each council's workload, the following information summarises the number of consent applications processed in the 1996/97 year by each of the three councils.

West Coast Regional Council

Consent application outcomes 1996/97

	Received	Granted	Appealed	Withdrawn
Notified	36	20	5	7
Non-notified	402	377	N/A	
TOTAL	438	397	5	7

Of the notified applications received by the council, 23 included discharge to water applications.

Environment Waikato

Consent application outcomes 1996/97

	Received	Granted	Appealed	Withdrawn
Notified	184	131	34	27
Non-notified	1026	1003	N/A	148
TOTAL	1210	1134	34	175

Discharges to water for 1996/97 comprised:

	Received	Granted	Appealed	Withdrawn
Notified	47	32	6	13
Non-notified	535	545	N/A	60
TOTAL	582	577	6	73

Southland Regional Council

Consent application outcomes 1996/97

	Received	Granted	Appealed	Withdrawn
Notified	64	67	1	5
Non-notified	507	502	N/A	16
TOTAL	571	569	1	21

4. INFORMATION PROVIDED BY THE APPLICANT

4.1 Preparation of applications

In deciding what information is necessary to include with a resource consent application, there are various procedures and avenues an applicant can follow.

Contact the council

An applicant can contact the regional council at an early stage of planning a new activity or prior to lodging an application. In this sample of 16 resource consents, any prior contact with an applicant was not generally documented, although all three councils stated that they encourage early consultation with them. One council does, where appropriate, enter into a joint process with the applicant and interested parties prior to an application being lodged to seek consensus on what the issues are and the information requirements of the AEE. Such early consultation between applicants and council staff was identified as good practice in the *PCE's Assessment of Environmental Effects* review (PCE 1995).

Information requirements in plans

Regional councils may prepare regional plans (s 63) to assist in achieving the purposes of the RMA. The contents of regional plans shall include "the information to be submitted with an application for a resource consent, including the circumstances in which the powers under s 92 may be used".

None of the three councils has completed a regional water plan as yet so that information requirements for discharge permits are communicated in other ways eg. in pamphlets or through the application documentation. Environment Waikato's Regional Coastal Plan,¹² for example, outlines information requirements for coastal permit applications. Similarly, Wellington Regional Council's Regional Freshwater Plan¹³ outlines the information requirements for discharges to fresh water.

The importance of referring to relevant plans for information requirements for different categories of activity is emphasised in the Ministry for the Environment's draft guide to preparing a basic AEE (1998 in *press*)¹⁴.

Council contacts the applicant

Southland Regional Council writes to each consent holder nine months in advance of a resource consent expiry date reminding the holder that an application for a continuing activity will be needed in the future. Reminder letters are sent at six months and three months. Environment Waikato writes to each consent holder seven to eight months in advance and also sends a reminder four months from a consent's expiry.

¹² Environment Waikato. Proposed Regional Coastal Plan for Waikato. August 1994.

¹³ Wellington Regional Council. Proposed Regional Freshwater Plan for the Wellington Region. January 1997.

¹⁴ Above note 4.

Application documentation

The application forms and supporting documentation also assist an applicant to determine what information is required. For example, Environment Waikato, with 6,000 dairy units within the region, has a separate application form for farm dairy effluent discharge. This form includes:

- ✗ an invitation to discuss the proposal with staff before lodgement of the application;
- ✗✗ applicant's details;
- ✗✗ location;
- ✗ types of resource consents sought;
- ✗ discharge of effluent to land;
- ✗ discharge of effluent to water;
- ✗✗ effects assessment; and
- ✗✗ a record of consultation with the Department of Conservation (**DOC**), Fish and Game Council, local iwi and other parties.

A booklet *Applying for a Resource Consent*¹⁵ is available for applicants. Southland Regional Council also has extensive information to assist dairy farmers when applying for resource consents for the disposal of dairy shed effluent. Environment Waikato has information on various treatment options available for dairy farmers.

The information provided with the application of the farm quarry for a discharge consent for stormwater discharge was deemed adequate by the council. The existence of a custom-made application form for quarry consent applications assisted the applicant to provide the necessary information.

Consultants

Applicants can use consultants to assist in the preparation of the information for the application, including the AEE. In this sample of 16 consents, applicants used consultants to obtain specialist information in eight instances. These ranged **from** one consultant providing a very specific piece of information (on the flora and fauna of a receiving water) to a consultant who managed input **from** a number of other consultants for the large new rural industry development.

Information was also provided by consultants on behalf of the applicant at the hearing of the consent. For the large rural industry, there were three consultants providing information on aspects of waste discharge to water. For the large gold mine where two discharge consents were considered, four consultants provided discharge-related information at the hearing.

4.2 Information assessment

Verification

Once the information with a resource consent application has been received by a council, there are processes in place to verify the accuracy of the information. Verification includes checking that all the relevant information has been provided and,

in some instances, checking that the information is accurate, eg the council recalculated the stormwater flow for the farm quarry.

Verification can also be undertaken by a site visit and table 4.1 gives information on whether a site visit was made for particular applications. For complex resource consent applications that are considered by the Hearings Committee in Southland region, councillors may undertake a site visit before or after hearing the application. The inspection is deemed to be part of the hearing. This was the case for the application from the large coal mine that is one of the largest mining ventures in this region and for the large rural industry. Councillors **from** Environment Waikato would also undertake a site visit before hearing a complex application.

For dairy shed effluent discharges, verification can be achieved through reference to a compliance database on the performance of effluent treatment systems compiled by MAF Quality Management for Environment Waikato over the years.

Other means include:

- ⌘ accessing information from other sections of council, for example compliance information, environmental monitoring information;
- ⌘ information fi-om a council's complaints database;
- ⌘ using an experienced and qualified staff member to check the information;
- ⌘ consultation with tangata whenua and other stakeholders; and
- ⌘ contact with other regional councils.

All three councils saw consultation as a key means of verifying whether there might be significant effects. Each council has a section in its discharge permit application form for a record of consultation that has taken place. This consultation applies to both notified and non-notified applications. Councils send out a copy of notified applications to key stakeholders such as iwi, DOC and Fish and Game Council branches (s 93 RMA). If councils have developed good relationships with key interested parties, informal consultation can be a means of quickly seeking verification of information.

One of the challenges faced by regional councils is the verification of who might be potentially affected parties. Sometimes it is difficult for regional councils to accurately identify neighbours who live downstream of a proposed discharge to water as some regional councils do not have a record of landowners' names and addresses (as district councils do). Regional councils do have access to Valuation New Zealand and Land Information New Zealand records but one council has found these are not 100% accurate. Southland Regional Council notifies most discharge to water applications because there are other users of the river apart from the adjoining property owners. It is therefore difficult to know who may be **affected** by an activity.

Review of information

Some councils have guidelines, a checklist or a consent processing manual for the assessment of the application, including AEE information, to ensure consistency in assessment of all applications.

Internal Assessments

All three councils internally assessed the adequacy of the information initially received for the 16 case study consents. Adequacy has been described by the PCE and checked with the councils as follows:

- ✓✓ adequate = information provided is of sufficient quality or any further information required is of a minor nature;
- ✓✓ generally adequate = information was mostly of sufficient quality although there were one or two important issues that were not covered;
- ✓ inadequate = significant gaps in the information were evident.

Within one council, applications for discharge permits are referred to the water quality officer; in another council an internal peer review process is used. For example, the application and supporting information for the discharge permit application for the large coal mine was considered by council **staff** to be thorough and well presented. Information provided by the applicant for stormwater discharge **from** the farm quarry (a much smaller scale activity) was also considered adequate by council **staff**. The adequacy of the information on the nature of the activity, the effects on the environment and any mitigation measures for adverse effects as assessed by the council are summarised in tables 4.2, 4.3 and 4.4.

External assessment

Councils commissioned an external review of the information provided for five of the 16 consents (refer table 4.1). The decisions to undertake an external review were related to:

- ✓ the complexity of the activity and associated environmental effects; or
- ✓ the degree of risk posed by the proposed activity to the environment; or
- ✓ the complexity of the technical information on environmental effects.

In the case of the large gold mine the external review had been completed prior to the joint hearing of the regional council and the district council in 1994 for the 36 consents required for the proposed activity. There was only one instance where the territorial local authority (TLA) and the regional council had each independently commissioned an external review (the large rural industry). The TLA had commissioned a review of the overall proposal and the regional council had commissioned a review of three aspects = the effects on soils, effects on groundwater and a review of the air emissions and modelling data (related to the consent applications to be considered by the regional council).

Information from pre-hearing meetings

Although the primary purpose of a pre-hearing meeting is to assist in resolving issues, there are other purposes that can be fulfilled. One secondary purpose is to ensure that relevant information is available to submitters in order for them to be able to assess the effects of a proposed activity on the environment. Another purpose is to resolve differences about the effects of an activity and, in some instances, be able to obtain a neighbour's written approval. Of this set of 16 resource consent applications, there was only one application where the council considered there were too many issues to resolve at a pre-hearing meeting and that it was best to address them all at a hearing.

Information that is brought to a pre-hearing meeting is used by one council to confirm the likely effects of an activity on the environment.

Where the information is not presented at a pre-hearing meeting, and further information is considered necessary by the council officers, presentation of information at the hearing of a consent application is an alternative. This was the case for the tourism development as the pre-hearing meeting identified that information on stormwater management was required.

The presence of a council officer at a pre-hearing meeting can sometimes help mediate certain situations where, for example, planning issues require interpretation or explanation. In some instances where information has been provided at a pre-hearing meeting, one council sought the acceptance by submitters of mediation as a way of resolving issues.

In many cases after negotiations over the proposed mitigation of effects or enhancement of the environment have taken place, submitters have been satisfied with the draft recommended consent conditions and have withdrawn their objection to a consent application.

4.3 Further information

If the information initially provided was assessed as insufficient by council staff, then further information was sought by the council. In the sample of 16 resource consents, this information ranged from a straightforward request for a record of consultation with one affected party to a request for necessary data on the summer low flow water quality of a stream.

In two examples there was no AEE information provided with the applications. One of these applications was for a treated sewage discharge with potentially significant effects on the receiving water. The effects of the truckwash application were unknown, ie there was no information on the proposed treatment of the wastewater, the nature of the receiving water or the effect of the present discharge on the receiving environment.

The three councils have a policy that, if there is insufficient information, the council may assess there is sufficient for the purposes of notification in order to get the resource consent processing underway. Information must be sufficient to enable potential submitters (or affected parties) to determine whether or not they will be **affected** (refer section 2.1). Further specific information is then to be made available either before the pre-hearing meeting, at a pre-hearing meeting or 15 days prior to the hearing of the application.

Table 4.5 gives a summary of what further information was considered necessary by the councils for the sample of 16 resource consents.

A letter containing a formal s 92 request for **further** information was issued for six out of the 16 consents whereas further information was requested in a more informal

manner from applicants for nine of the consents. An informal request is more likely to be appropriate where the further information can be obtained quickly and there is no real need to postpone processing of the application. The use of s 92 in these case study resource consents has been to elicit necessary information so that the effects of the proposed activity on the environment can be adequately assessed. The purpose of this section is described as follows by one practitioner:

... “this provision empowers all participants in the consent process to form a reasonable judgement, aided by consultant experts if necessary, on whether the developer’s environmental assurances are actually soundly based, and on whether the proposed safeguards are actually likely to work in **practice**.”¹⁶ .

TABLE 4.1 Review of information provided with resource consent application

Proposed Activity	Internal	External	Site visit
Small coal mine	Yes		
Dairy shed	Yes		
Sewage treatment upgrade	Yes		
Saleyards	Yes		Yes
Large coal mine	Yes		Councillors and staff
Large rural industry	Yes	Yes ¹	Councillors and staff
Truckwash	Yes		Yes
Dairy shed	Yes		Yes
Farm quarry	Yes		Yes
Small rural industry	Yes	Yes ³	Yes
Sewage treatment upgrade	Yes	Yes	Councillors and staff
Tourism development	Yes	Yes ¹	Yes
Alluvial gold mine	Yes		Yes
Coal processing	Not documented		Yes
Dairy shed	Yes		Yes
Large gold mine	Yes	Yes ²	Yes

¹ External reviews conducted by both regional council and TLA

² External review had been conducted on overall proposal prior to these resource consent applications being considered

³ An external review was undertaken but the council was not satisfied with the quality of the review

¹⁶ Nixon 1998 critique in **McShane 0. Land Use Controls under the Resource Management Act.**

TABLE 4.2 Assessment of the adequacy of information about the proposed activity provided with the application.

Proposed Activity	Assessment
Small coal mine	Adequate
Dairy shed	Generally adequate -pond sizes required
Sewage treatment upgrade	Inadequate - information on proposed treatment not provided
Saleyards	Inadequate - information on wastewater treatment and pond size required
Large coal mine	Generally adequate - one or two omissions
Large rural industry	Generally adequate - for the discharge to water consents but overall not enough for Council to properly assess effects on the environment
Truckwash	Inadequate - no AEE, no information on treatment plant or on receiving water
Dairy shed	Generally adequate - pond dimensions not included
Farm quarry	Adequate
Small rural industry	Inadequate - options for wastewater discharge not fully explored
Sewage treatment upgrade	Adequate - innovative approach describing type of treatment and type of discharge
Tourism development	Inadequate - sewage treatment design needed more information
Alluvial gold mine	Adequate
Coal processing	Inadequate - site plan and more information on settling pond design required
Dairy shed	Generally adequate
Large gold mine	Adequate

TABLE 4.3 Assessment of the adequacy of information on effects of the activity on the environment provided with the application

Proposed Activity	Assesment
Small coal mine	Adequate relative to nature and scale of effects
Dairy shed	Inadequate - no information on effect of discharge on nutrient levels
Sewage treatment upgrade	Inadequate - no AEE supplied
Saleyards	Inadequate as to effects on receiving water
Large coal mine	Generally adequate although some weaknesses identified by council
Large rural industry	Generally adequate although council did require more information on long-term effects on the environment
Truckwash	Inadequate - no AEE initially supplied
Dairy shed	Generally adequate although consultation with potentially affected Parties not included
Farm quarry	Adequate
Small rural industry	Inadequate - botanical information required
Sewage treatment upgrade	Generally adequate although summer survey of receiving water needed
Tourism development	Inadequate - lack of information on the effects of stormwater discharge and effluent discharge
Alluvial gold mine	Generally adequate
Dairy shed	Generally adequate although consultation with affected parties not included
Coal processing	Inadequate - no information on quality of the receiving water
Large gold mine	Adeauate

TABLE 4.4 Assessment of adequacy of information on mitigation measures provided with the application

Proposed Activity	Assessment
Small coal mine	Adequate
Dairy shed	Inadequate – no information on how the use of ponds would mitigate effects
Sewage treatment upgrade	Inadequate – discussion of alternatives limited to cost information
Saleyards	Inadequate
Large coal mine	Generally adequate
Large rural industry	Generally adequate
Truckwash	Inadequate initially
Dairy shed	Adequate
Farm quarry	Adequate
Small rural industry	Inadequate
Sewage treatment upgrade	Adequate – included contingency measures
Tourism development	Inadequate
Alluvial gold mine	Adequate
Coal processing	Adequate
Dairy shed	Adequate
Large gold mine	Adequate – included contingency measures

TABLE 4.5 Further information requested by council

Proposed Activity	Further Information
Small coal mine	No further information requested but consent of one <u>potentially affected party</u> required
Dairy shed	Effect of discharge on nutrient levels in receiving water
Sewage treatment upgrade*	An AEE; including quality and quantity of discharge, effect on receiving water
Saleyards	Effluent discharge volumes, pond size, results of consultation ¹
Large coal mine	Biological assessment and chemical monitoring of receiving water; contingency planning
Large rural industry	Wastewater treatment design, effluent mass loads to receiving water
Truckwash*	An AEE; including treatment system design, consultation results
Dairy shed	Pond dimensions
Farm quarry	No further information required but confirmation from iwi that there were no concerns was requested
Small rural industry*	Options for discharge of effluent: botanical information
Sewage treatment upgrade*	Summer surveys of receiving water quality, contribution of effluent to nutrient enrichment
Tourism development*	Sewage treatment design
Alluvial gold mine	Effects on water supplies of adjacent residents
Coal processing*	Design of settling ponds, site plan
Dairy shed	N/A
Large gold mine	Effects of discharge on receiving water quality

*Formal s 92 request for further information made to applicant

4.4 Summary

The preparation of the application and the associated AEE for these 16 consent applications ranged **from** clearly inadequate to excellent. There were two applications where no AEE was initially provided. One of these was for a sewage treatment upgrade. The district council was initially uncooperative about supplying the relevant information and it took some three years before the district council made a new application that was supported by an AEE. The internal assessment of the new application concluded there was probably sufficient information to advertise but **further** information was required. A consent was eventually granted some five years from the original application. The owner of the truckwash facility took some six years to produce the information required to process the application. The information required was not complex.

An applicant is required under the RMA to submit information on the following:

- ≤ the effects of the proposed activity on the environment;
- ≤ information about the proposed activity; and
- ≤ information on measures to mitigate adverse effects on the environment.

Information provided on the proposed activity was considered:

EE adequate	5 out of 16 consent applications;
EE generally adequate	5 of 16; and
EE inadequate	6 out of 16.

Information on the effects the proposed activity might have on the environment was considered:

EE adequate	3 out of 16 consent applications;
EE generally adequate	6 out of 16;
EE inadequate	7 out of 16.

One council noted that inadequate information on effects on the environment is the most frequent cause of rejection of applications.

Information on mitigation measures proposed by the applicant was considered:

EE adequate	8 out of 16 consent applications;
EE generally adequate	2 out of 16;
EE inadequate	6 out of 16.

Of the 16 consent applications, five were inadequate both in terms of information provided with the resource consent application on the proposed activity and the effects on the environment.

Use of external reviewers

External reviewers to assist councils in the assessment of complex applications were commissioned for five of these consents. The five applications had the potential to significantly affect the environment. There was considerable uncertainty as to the accuracy of the technical information of a sewage treatment system provided for the tourism development. The external reviewer for the regional council confirmed that the technical assumptions for the design of the sewage treatment system were not usually used in New Zealand.

The requests for further information have been examined and in all cases the information was necessary to either assess the nature of the activity or the effects on the environment or to outline the proposed mitigation measures. When applicants are assessing how much information will be required, it would be helpful to consider what are the strategic risks and benefits of using a water resource. For example an activity that relies on using river water to absorb waste heat should consider the strategic risks that river temperature levels may rise to higher than normal temperatures under climatic extremes and therefore absorb little or no waste heat or reach levels that threaten the river ecosystem.

5. INFORMATION USED IN DECISION MAKING

5.1 Information provided by applicants

Section 4 has outlined the information provided by applicants to support their resource consent applications for discharge permits. This sample of applications ranges from small scale activities, eg a farm quarry, to large scale activities, eg large coal mine. The scale and significance of the effects ranges from:

- /// small scale and minor significance, eg the coal processing where the discharge is intermittent;
- /// small scale but potentially significant, eg sewage discharge from a tourism development in a sensitive receiving water;
- /// medium scale and potentially significant and complex, eg treated mine wastewater.

The nature and extent of the information provided by the applicant gives some indication of either how the applicants viewed the effects that their proposed activity might have on the environment and how the adverse effects could be mitigated, or of their understanding of what the information requirements might be. As part of the application the question is asked, “What effect will this activity have on the environment?” Table 5.1 summarises the applicants’ responses and the councils’ assessments as reflected in the decision made on each application. In all instances, the councils’ assessments of the significance of the effects was conditional upon the provision of adequate effluent treatment.

Eleven of the applicants in this sample of 16 **recognised** that their proposed activity would have some effects on the environment although four applicants assessed that there would be no significant adverse effects. The relevant regional council agreed with ten of these applicants ie. that although there would be some effects on the environment, these effects could be mitigated. The one application where the applicant and the regional council did not agree was for a proposed new activity where there was uncertainty over the long-term effects of a discharge on the river.

Five applicants asserted there would be minimal or nil environmental effects. In all five applications, the council considered that there would be effects and that they could be mitigated. If the applicants are unaware of the effects their proposed activity could have on the environment, it could make information gathering more difficult.

TABLE 5.1 Assessment of Significance of Environmental Effects by Applicants and Councils

Proposed Activity	Applicant's Response	Council Response (reflected in decision)
Small coal mine	Some effects on water quality	Minor with stormwater treatment.
Dairy shed	Nil effects	Some effects but mitigated by effluent treatment and monitoring
Sewage treatment upgrade	No significant adverse effects	Effects mitigated through effluent treatment
Saleyards	Some effects "fauna are largely pollution-tolerant"	Effects can be mitigated through improved effluent treatment.
Large coal mine	No significant adverse effect since mine wastewater will be treated	Potential for effects but can be mitigated through effluent treatment
Large rural industry	No significant adverse effect (water discharge only when land disposal can't be used)	Potential for long-term adverse effects of discharge to water – effects can be mitigated in the short term with large number of conditions,
Truckwash	Minimal effects	Effects mitigated by effluent treatment to be minor
Dairy shed	No effects	Effects mitigated by effluent treatment to be minor
Farm quarry	Little or no effects	Effects mitigated by effluent treatment to be minor
Small rural industry	Nil effects	Effects mitigated by effluent treatment to be minor
Sewage treatment upgrade	Some effects	Mitigated by setting effluent standards, review condition
Tourism development	Minimal "water quality downstream not significantly altered"	Effects mitigated through conditions to ensure treatment plant performance and increased capacity of treatment plant
Alluvial gold mine	No significant. effects with expected discharge conditions	Effects mitigated through standard conditions
Coal processing	Some effects	Effects mitigated through standard conditions
Dairy shed	No effects with treatment system in place	Effects mitigated – monitoring conditions to check
Large gold mine	Some effects, offset by design of treatment system	Similar assessment – extensive set of conditions

5.2 Information obtained through consultation

Councils sought information from potentially affected parties (in the case of **non-notified** consents) and received information from submitters (to notified consents) for all these 16 consent applications. The purpose of receiving such information, according to the three councils is to check whether there might be significant effects on the environment from a proposed activity (refer section 4.2).

All three councils have established regular consultation with tangata whenua and key stakeholder groups, eg DOC and Fish and Game Council, as encouraged by the RMA. This consultation forms an integral part of information gathering.

Submitters were satisfied at the level of information provided by one applicant whose activity is a large coal mine with potentially significant effects on the environment. This may well have been a result of the applicant consulting the interested parties prior to the lodging of the applications thus being able to address submitters' concerns in the information provided with the application. This prior consultation had also been a feature of one of the sewage treatment upgrade applications so that by the time the application was notified, only three submissions were received and they were primarily general concerns about the discharge of wastes to natural water.

In seven of the resource consent applications, however, the submitters considered the information was inadequate for them to assess the effects on the environment. In one instance, the large rural industry, submitters found the information supplied by the applicant complex, hard to understand and some submitters considered they could not easily assess the effects on the environment. In another instance, the tourism development, the submitters voiced similar concerns to those held by the council staff on the inadequacy of the technical information provided by the applicant. Table 5.2 summarises the information added by the different means of consultation and the concerns raised by submitters.

Interested parties also raised concerns as part of their information provided to councils. These concerns ranged from the need for extensive monitoring to concerns of iwi about the discharge of wastes into natural water. For example, interested parties raised concerns about how they perceived the alluvial gold mine application would affect their lifestyle and/or livelihood and were adamant that certain mitigation measures should be undertaken.

New information was supplied by some interested parties, for example iwi advised that there were no wahi tapu at or near the farm quarry. Confirmation of the lack of effects was obtained through consultation with interested parties for the two of the three **non-notified** consents, the small coal mine and the truckwash facility.

Interested parties did suggest **draft** conditions for particular consent applications that would reflect their concerns or that would, in their view, mitigate the adverse effects on the environment.

TABLE 5.2 Information Presented and Concerns of Submitters/Affected Parties

Proposed Activity	Submitters' concerns/issues
Small coal mine	Concern that more extensive monitoring required
Dairy shed	Information on adverse effect of discharge on trout habitat presented by a submitter. Information supplied by applicant not considered adequate
Sewage treatment upgrade	Information considered inadequate by submitters who could not assess effects on the environment
Saleyards	Information considered inadequate by submitters who could not assess effects on the environment; need for improved treatment
Large coal mine	Submitters satisfied with level of information provided; applicant had consulted interested parties early in the process
Large rural industry	Submitters found information complex, hard to understand and could not easily assess effects on the receiving water environment
Truckwash	Consultation verified no impacts
Dairy shed	Iwi concerns about discharge to water raised: effects on fish in stream
Farm quarry	Iwi advised no wahi tapu at or near the site. Consultation verified no impacts
Small rural industry	N/A – no submitters to notified consent
Sewage treatment upgrade	Concerns raised during consultation prior to application being lodged, eg, iwi concern about discharge to water
Tourism development	Submitters concerned about performance of treatment system. Submitter presented information on significance of receiving water for fish spawning and habitat
Alluvial gold mine	Submitters wanted more detailed information on manner of mining and environmental effects
Coal processing	Concerns not related to water discharges
Dairy shed	One affected party concerned with quality and amount of information being received on applications for dairy shed discharges in general
Large gold mine	Submitters concerns re adequacy of information related to use of USEPA criteria, sensitivity of fish in mixing zone etc.

5.3 Information added by councils

Where the information provided with the application was clearly insufficient, council officers in some instances assisted the applicant by specifying what information was required, eg, council assisted the applicant of the small rural industry by **identifying** the expert agency/person with whom to make contact. Council officers made several site visits to advise the applicant of the information requirements.

When a resource consent application is being considered, information may be required to augment that supplied by the applicant and the interested parties consulted. Councils are able to add a variety of information depending on the nature of the application and the nature of the receiving water including background information on water resources of the region.

In this review the information added by councils included:

- ✗ the results of monitoring previous consents;
- ✗ compliance information from surveys of dairy **farms**;
- ✗✗ background water resources information on a particular receiving water body –
flow data, quality data;
- ✗ information on performance of wetlands for sewage treatment purposes;
- ✗ information on the effect of the discharge on nutrient levels in a receiving water;
- ✗✗ information on the potential for effects on values and significance for iwi and
acceptable mitigation measures; and
- ✗ rainfall intensity events and runoff data.

The monitoring of consents for which a replacement consent is sought gives a valuable source of information on the effects of an activity on the receiving water environment. This was particularly so for one region where the majority of the consent applications examined were for replacement consents.

Table 5.3 summarises the information gleaned from the council information sources for the purpose of considering each resource consent.

TABLE 5.3 Relevant Information Added by Council and Used in Decision Making

Proposed Activity	Council Information
Small coal mine	Monitoring information available from monitoring of previous resource consent
Dairy shed	Previous monitoring information available: effect of discharge on nutrient levels in receiving water supplied by council and a submitter
Sewage treatment upgrade	Monitoring information available from monitoring of previous resource consent
Saleyards	Monitoring information available from monitoring of previous resource consent
Large coal mine	Monitoring information available from monitoring of previous resource consent
Large rural industry	No additional information added by council
Truckwash	No additional information added by council
Dairy shed	Compliance information from survey of dairy farms conducted by MAF for council
Farm quarry	Rainfall events and recalculated discharge volume
Small rural industry	Assistance to applicant with specific AEE information requirements
Sewage treatment upgrade	Background water resource information on receiving water
Tourism development	Information on performance of wetlands in other parts of NZ
Alluvial gold mine	No additional information added by council
Coal processing	No additional information added by council
Dairy shed	No additional information added by council
Large gold mine	No additional information added by council

Another important role for the regional council is to assess the information and concerns raised by the parties who were consulted. Often these parties consider the information given is inadequate for the purposes of assessing the effects on the environment (see section 5.2). The council assessment (as indicated by the file records) does not always support the submitters' concerns or the submitters' assessment of the effects on the environment. Table 5.4 summarises the information or concerns raised by submitters that was reflected in the council decision making.

Arguably, one of the most important aspects of the assessment of an AEE is the experience and knowledge of the council officer(s) who undertake this task. An examination of the files of many of these consent applications indicated that skilled and experienced **officers** had internally assessed the applications. Even though this aspect was not part of the terms of reference for this review, one reviewer commented that, in their opinion, the variability of the skills and experience of council officers who either assist applicants or who assess the applications in councils is a major reason for some applicants' frustration with the RMA consent processes.

**TABLE 5.4 Use of Submitters/Affected Parties
Information in Decision Making**

Proposed Activity	Information Used
Small coal mine	Shorter consent term not accepted; extent of monitoring not accepted
Dairy shed	Concerns over some effects; not accepted in decision making
Sewage treatment upgrade	Need for monitoring accepted
Saleyards	Need for improved effluent treatment and monitoring requirements accepted
Large coal mine	N/A
Large rural industry	Need for intensive monitoring accepted; higher “trigger” flow in river before disposal to river can occur not accepted
Truckwash	Consultation information confirmed no effects provided effluent treated
Dairy shed	Information from iwi generated new treatment option; accepted by all parties
Farm quarry	Information confirmed effects were minor
Small rural industry	N/A
Sewage treatment upgrade	Information from iwi acknowledged with provision for diffuse discharge of effluent into receiving water
Tourism development	Need for more frequent monitoring, increased wetland area, shorter consent term
Alluvial gold mine	Information led to turbidity and suspended solids conditions
Coal processing	Information led to turbidity and suspended solids conditions
Dairy shed	Information led to extensive set of conditions
Large gold mine	Information from submitters partly reflected in conditions

State of the environment monitoring

The nature and extent of state of the environment information on water resources held by councils varies. In regions where there have been conflicts between the demands of competing water uses, councils generally have an extensive set of water resource and water quality information on particular rivers. Where background information is not readily available from a council, there is more reliance on information provided by the applicant, or the submitters, to ascertain whether there may be significant effects on the environment.

5.4 Barriers to obtaining information

Resource consent staff of the three regional councils considered that the following barriers hindered the obtaining of information for the purpose of adequately assessing the effects of activities on the environment. These factors are not listed in any rank order:

- ✧ the cost to councils of obtaining some information;
- ✧ the availability of fundamental scientific information;

- the availability of technically difficult information, eg public health information on pathogens other than indicator bacteria to assess environmental effects;
- commercial sensitivity;
- extracting information **from** applicants who don't understand the information requirements;
- convincing applicants that there could be significant environmental effects from their proposed activities and that information is needed;
- differences in perception of information requirements between council staff and applicants; and
- not knowing what information is available from different agencies, eg Crown Research Institutes.

5.5 Sustainable management

The promotion of the sustainable management of natural and physical resources is the purpose of the RMA. In addressing issues for the decision maker, mention may be made in the council officer report of the manner in which this purpose could be achieved. In the sample of 16 consents, the sustainable management of the receiving water environment was explicitly addressed in three out of the twelve notified applications. It was addressed in the remaining notified applications in the section of the council officer report on policies and plans. The sustainable management of the freshwater environment was not explicitly addressed by the applicants in the AEE although there was some understanding by a few applicants that mitigation of adverse effects was necessary.

5.6 Council officer reports

The council officer report to decision makers is the primary vehicle for the assessment of the resource consent application. An officer report was prepared for all the notified applications in this sample. There was only one application (non-notified) where a staff report was not prepared (and the effects on the environment were minor).

Where councils have delegated decision making to council officers, a report on an application does not generally **specify** the legal requirements of the RMA as it is expected that council officers are familiar with the requirements.

The contents of a council officer report typically include:

1. a summary of information received **from**:
 - the applicant;
 - the interested parties' submissions (if received);
 - information received at a pre-hearing meeting (if held);
 - further information requested (if appropriate); and
 - additional information supplied by the council (refer table 5.3).
2. a statement of legal requirements and the relevant policies and plans that relate to the application. Many of the provisions referred to in section 2 of this review are set out so that decision makers are very clear as to their statutory obligations.

3. a summary of the issues and likely environmental effects arising from the application (refer to table 5.5 for the issues raised in these 16 consents). In some instances it has been an issue that an application does not adhere to a council policy, eg the three dairy shed applications were for discharge to water rather than for land disposal, which is the councils' preferred option.
4. comment on the concerns and likely effects, the adequacy of information, and the negotiations between submitters and the applicant as to courses of action or over a **draft** set of conditions that may be recommended.
5. a set of draft conditions for the decision maker to consider if the decision to grant a consent is likely. The conditions generally reflect ways in which concerns could be mitigated and community and applicant expectations met. In one council, staff reports do not contain recommendations as the council wishes to avoid any perception that council officers may have prejudged an application.
6. In one council, the procedure is usually to send a copy of the draft staff report to the applicant and submitters as part of a "no surprise" policy. If the parties are satisfied with the **draft** report, submitters can indicate they are satisfied with the proposed conditions and do not wish to be heard at a hearing. As a result a hearing may not need to be held.

Where the effects on the environment of a proposed activity are considered minor, a council may use a set of standard conditions. An example is conditions to protect aquatic life that include limits on any increase in suspended solids (SS) and turbidity in the receiving water.

TABLE 5.5 Issues Raised in Officer Reports

Proposed Activity	Issues
Small coal mine	No issues raised in officer report
Dairy shed	Issue of preference for land disposal of effluent/split consent land and to water
Sewage treatment upgrade	Uncertainties about noxious or toxic industrial and trade waste inputs. Lack of information on contingency measures to deal with reduced treatment
Saleyards	Changes to treatment system made as a result of submitters' concerns
Large coal mine	Large mining venture in region but measures in place for control of mine wastewater
Large rural industry	Stormwater management; management of process water to land with river discharge as a contingency and the "trigger" levels of river flow to effect the latter. Monitoring regime because of uncertainty of site effluent parameters.
Truckwash	Progress in processing application held up because applicant did not produce relevant information
Dairy shed	Changes to regional rules for the management of dairy effluent had a significant effect on this application. Rules now provide for discharge of dairy effluent to water provided appropriate standards are achieved.
Farm quarry	No issues
Small rural industry	Discharge of large quantity of geothermal water to receiving water not sustainable. Protection of botanical values.
Sewage treatment upgrade	The term of the consent, ensuring community expectations can be met in future for improvements.
Tourism development	Whether the sewage treatment system will function adequately to ensure no adverse effects on the environment; stormwater discharge concerns
Alluvial gold mine	Effects of mining on both surface water quality and groundwater
Coal processing	Includes water quality - environmental effects should be kept within acceptable limits
Dairy shed	No officer report produced
Large gold mine	Effects within the mixing zone, use of EPA criteria and other issues raised by submitters.

5.7 Decision making

Who makes the decisions?

Each of the councils has a particular set of delegations. Consent applications are dealt with according to those delegations, as outlined in the following table.

ENVIRONMENT WAIKATO

<i>Consent Status</i>	<i>Delegated Authority</i>
Non-notified consents	Designated staff member
Notified consents, submissions received	Regulatory/Hearings Committee of Council
Notified, no submissions	Designated staff member
Notified, submitters satisfied with draft	Designated staff member and Chairman of Regulatory Committee

SOUTHLAND REGIONAL COUNCIL

<i>Consent Status</i>	<i>Delegated Authority</i>
Non-notified consent	Director of Environmental Management
Notified, submitters satisfied as to draft conditions	Consents Committee
Notified consent	Hearings Committee

WEST COAST REGIONAL COUNCIL

<i>Consent Status</i>	<i>Delegated Authority</i>
Non-notified	Resource Management Officers Committee
Notified, submissions received	Hearings Commissioner, either a councillor or a person with a technical background and resource management understanding.
Notified, no submissions	Resource Management Officers Committee

What information do they use?

The decision makers are given a copy of the staff report, the applicant's information, any external audit information, copies of the submitters' concerns and draft consent conditions.

The record of the decision that contains the details of the consent granted and the conditions associated with the consent is a primary source for assessing whether information provided by the applicant, the submitters and the council is used. Within this set of 16 resource consent applications, two examples have been used to illustrate this. One is a non-notified consent.

The first example is the small coal mine that was granted a discharge permit for ten years. The information provided to the decision maker included the applicant's information and the council officer report together with the affected parties' written consents. A summary of this information is:

- the nature and operation of the sedimentation ponds;

- ⌘ the nature of the mining operation;
- ⌘ compliance with a previous resource consent;
- ⌘ the stormwater discharge from the mining is consistent with the proposed Regional Policy Statement;
- ⌘ the term of the consent reflected a concern of one **affected** party;
- ⌘ the extent of monitoring requested by one affected party was not considered necessary by the council officer; and
- ⌘ the council officer assessment that, although the mine was a significant activity, it is supervised and maintained in such a way that the environmental effects are minor.

Conditions related to the mitigation of adverse effects included:

- ⌘ the suspended solids concentration of the discharge shall not exceed **100g/m³**;
- ⌘ the minimum standards for Class D waters to apply 50m from the discharge point;
- ⌘ monitoring condition to check compliance of the above two conditions;
- ⌘ all contaminated water to be treated in settling ponds; and
- ⌘ a review condition for specified purposes.

The conditions on monitoring requirements were less onerous compared to a previous consent as the council had gathered information showing that the company had complied with the conditions of the consent and that the (previous) level of monitoring was regarded as excessive compared to similar operations in the region where there are also no discernible effects.

The second example was the resource consent application for the large gold mine. The two applications were one to discharge seepage and treated mine wastewater to ground through infiltration basins and one to discharge the seepage and treated mine wastewater to a river. The applicant provided an extensive AEE for the two discharge permit applications that complemented the **AEE** provided for the initial applications. The AEE drew upon a number of technical studies completed for the mine proposal of which eight referred to aspects of mine wastewater disposal. There was no request for further information (s 92) as the council considered the further information could be provided at the hearing. The reason extensive information was needed for these two applications was that the applicant had not decided on a preferred method of disposal for the treated mine wastewater.

Information presented by the applicant at the hearing included:

- ⌘ the aquatic ecology of the river and the applicability of **USEPA**¹⁷ water quality criteria for protection of aquatic life;
- ⌘ the treatment technology options available to the company;
- ⌘ proposed options to discharge to groundwater; and
- ⌘ the impact for fish in the mixing zone in the river,

Both consents were granted; however, a condition on the consents ensures that only one can be exercised at a time. The conditions imposed on the discharge to the river consent included:

¹⁷ United States Environment Protection Authority

- ⌘ a compliance monitoring point shall be provided at the point of discharge from the mine waste water treatment plant;
- ⌘ limits on the mass rate discharge of constituents in the treated mine wastewater at the compliance point (one submitter has raised the issue of the mass rate discharge being more applicable than concentration of constituents in the treated mine wastewater);
- ⌘ limits set for constituents of the treated mine wastewater that are hardness dependent (Cu, Ni, **Zn**);
- ⌘ a limit on the turbidity of the discharge at the compliance point (important for protection of aquatic life);
- ⌘ monitoring of the discharge and the flow of the river;
- ⌘ monitoring of benthic invertebrates and fish populations;
- ⌘ annual reporting on the mine operations and effectiveness of the mine wastewater treatment system.

What is the outcome?

Of the resource consents considered in this review, all but one were granted and all of these had conditions associated with the consent. The one application that was declined was for a stormwater discharge for the tourism development. The applicant changed the method of stormwater management between the time of the pre-hearing meeting and the hearing of the consent. However, the information was not provided prior to the hearing either to the district council or to the regional council. The officer report raised this lack of information and the Hearings Commissioner noted

“Being unable to make the judgement required under section 104(3) – actual and potential effects on the environment – and having misgivings about the ability of the existing stormwater system to cope with the unspecified increased discharge I have decided **to decline the consent to discharge stormwater.**”

The contribution made by submitters in providing information for decision making has been summarised for these resource consents (see table 5.4). The information provided by interested parties is not automatically accepted by the decision makers nor is it all reflected in resource consent conditions. In some instances where iwi concerns were made known, new options for disposal to water that included an element of land treatment were proposed, sometimes by the council staff, and accepted by all parties. In other instances where interested parties wanted more stringent conditions set, the council decision makers did not accept the need for this,

For applications where the regional councils considered that the adverse effects on the environment could be mitigated, the provision of measures to ensure any effects on the environment were minor was generally required. If the effects on the environment were assessed as potentially significant and adverse, the conditions reflected these assessments. There was only one consent application in this set (for a dairy shed discharge) where the conditions appeared not to relate to the nature and scale of the activity. This intermittent discharge is to a small creek which then flows to a major river.

Conditions requiring monitoring of the effect of the activity on the environment were included in all 16 consents. The conditions reflected the issues raised by the council officers in the officer reports and the concerns (if considered relevant) of the submitters/affected parties. In some cases, the conditions associated with the granted resource consent included extra conditions added by the decision maker.

In situations where it becomes clear that not all information is available at a hearing, the decision maker could adjourn the hearing to enable further information to be sought, thereby avoiding the need to decline and invite a reapplication for the consent. This course of action would have to be discussed fully with the submitters who may be opposed to such a move.

5.8 Summary

Information obtained through consultation

Information from submitters or affected parties was an important part of the assessment of whether environmental effects of a proposed activity were significant.

There were several instances of better environmental results being achieved because of the information or concerns raised by submitters or **affected** parties. For example the four submitters to the saleyards application to discharge stormwater and **yardwash** to a small stream were all of the view that changes to the treatment system were required. The applicant accepted these concerns. By separating out as much stormwater as possible from the **yardwash** entering the ponds, the effluent quality was improved.

Information from submitters also led to an innovation in effluent treatment that met the needs of the applicant and the concerns of the submitters. For example, for one of the dairy shed discharges, council officers suggested a fenced-off drain followed by a gravel filter in addition to the existing effluent treatment pond prior to discharge to a river. This suggestion was accepted by the applicant and the submitters.

Information added by councils

There are a number of ways in which council officers can assist in ensuring there is an appropriate flow of information to applicants, submitters and decision makers.

1. The technical information available as state of the environment monitoring or as water resource information on the water quantity and/or water quality of either a catchment or a particular river or stream. There was a range of background information available from the three councils. For some small streams there was little water quantity or quality information in one council's region. In the other regions there was sufficient water resource information available for council officers to assess the effects of discharges on all except the unnamed tributaries. Another very **useful** source of information in the future will be information on compliance with resource consent conditions, especially where replacement conditions are sought.

2. The articulation of the issues raised by a consent application. Such issues ranged from applicants wishing to depart **from** council policy, eg dairyshed discharges to water when regional policy is a preference for land disposal, to very technical issues such as the applicability of **USEPA** criteria for protection of aquatic life.
3. The summary of the information in the officer report that is given to the decision maker. The summary generally includes **draft** resource consent conditions. The conditions are the mechanism for ensuring that the environmental effects can be mitigated.

The officer reports examined as part of this review generally contained relevant and sufficient information for the decision maker. Where there were gaps in the information the reports noted that further information would be presented by the applicant at the hearing.

For one major application, the officer report presented **draft** conditions for the decision maker's consideration together with comment on any relevant information from the applicant, submitters or from council officers as to the necessity or purpose of each of the draft conditions.

Do the decision makers use the information provided?

Information or concerns from submitters is not always upheld by the decision maker. Where submitters are uncertain about whether there could be significant effects on the environment, they tend to request extensive monitoring conditions.

Where a decision maker is not convinced that the information supplied by the applicant is reliable, additional conditions may be included to ensure, for example, that the performance of an effluent treatment system will mean that any adverse effects on the environment are mitigated.

Applications for proposed new activities examined in this review tended to receive a thorough scrutiny from the council officers, submitters and the decision makers. In the case of the **hardrock** gold mine application, some submitters raised very technical matters that the applicant addressed at the hearing with the aid of four technical experts. At least two of these technical matters were not taken into account in the granting of the two consents. Although it could be inferred that some of this technical information was not significant it is observed that **hardrock** gold mine applications in some other places in New Zealand receive a more thorough scrutiny than do other industries. Not only are the effects on the environment usually significant and complex, but also the values of some submitters "drive" the information requirements. The uncertainties of managing the environment for the long term is one of the key issues for some submitters when considering **hardrock** gold mining in New Zealand.

Applications for replacement consents for existing activities were **often** considered in the light of an applicant's previous compliance record. In one instance, monitoring requirements on a replacement consent were less onerous than had been the case for the previous consent. This was due to the implementation and regular reporting of a monitoring regime for the previous resource consent.

An examination of the decision of a hearing for this sample of 16 consents did indicate that the decision maker is using the information presented prior to and at the hearing (if such is held). The extent of information required varies with the nature of the activity and the scale of effects. Where new activities are proposed the information requirements are more extensive than that for replacement consents. This is because there are often uncertainties in the nature of the effluent treatment systems and the effects of the discharge on the receiving water. Where there is considerable uncertainty about the nature of the effects on the environment, councils require additional information to assist in decision making. The only consent application where it was not possible to ascertain this was for one non-notified consent for which an officer report was not written.

The notion that the **RMA** is “information hungry” cannot be supported for this sample of 16 resource consent applications.

6. FINDINGS

From the sample of 16 resource consents, the following findings can be drawn.

- information requirements were appropriate for the majority of the 16 consents when considering the nature and scale of the activities and the effects on the environment. The one major exception is the proposed large gold mine's application where the information "driver" was the different value set of some of the submitters and the importance to them of managing the environment for the long term.
- applicants for small and medium sized activities with the potential for effects on the environment either do not appreciate the effects their activity might have on the environment or do not appreciate the information requirements for their resource consent applications.
- applicants with complex activities or where activities are likely to have a significant effect on the environment are more likely to provide the required information especially when applicants have employed consultants who are knowledgeable on AEE information requirements.
- councils are using external review for applications where there are significant uncertainties in the information provided or where there are complex environmental effects to be considered.
- the requests for further information (ie the use of s 92) were generally for the purpose of filling significant information gaps or to advise of design changes as community concerns were incorporated into the design of facilities. These requests were reasonable considering the scale and significance of potential effects.
- consultation with **affected** parties for non-notified applications is assisting decision making through either provision of new information, or advising that the effects of a proposed activity on the environment are or are not of concern. Consultation with **affected** parties is an important part of the information quality assurance process.
- information gained through consultation with submitters was used in setting conditions of the granted discharge permit where the decision maker assessed it was necessary.
- where officer reports bring together all the necessary information, they are a key source of information to the decision maker.
- sustainable management of the water resources is mainly being promoted through the mitigation of adverse environmental effects although environmental enhancement was evident for at least one application.

7. RECOMMENDATIONS

To the Minister for the Environment:

- When considering any fundamental changes to the Resource Management Act 1991 involving restricting the information required under the Act, be mindful of the importance of obtaining sufficient and necessary information from a range of sources in order to properly fulfil the purpose of the Act.
- To make additional resources available to the Ministry for the Environment to assist applicants in understanding the information requirements of the resource consents processes.

8. GOOD PRACTICE

Communicating to resource consent holders well before a consent expires and sending reminders prior to the expiry date.

Design of application forms for particular activities in order for the information requirements to be well understood by applicants and ensuring information provided is appropriate to the activity and its scale.

Assistance to applicants both in terms of the requirements for information and where to obtain information.

Making available to applicants examples of good AEEs where the information was sufficient to assess the effects of the proposed activity on the environment.

Recording information on effects relevant to particular activities for use in giving advice and assessing similar applications.

A joint process with the applicant and interested parties prior to an application being lodged to seek consensus on what the issues are and the information requirements of the AEE.

A form on which the consent officer comments on the adequacy of the information provided with an application together with the recommendation to notify or not.

Previous monitoring information included on file of resource consent application where a replacement of the consent is sought.

Submitters having the choice to request issues to be resolved through mediation.

The circulation of information on monitoring and water quality assessments before a pre-hearing meeting for some applications.

A copy of the draft officer report being sent to the applicant and submitters as part of a “no surprises” policy prior to a hearing.

Technical seminars for resource consent processing staff held regularly.

Development of a consent processing manual that includes guidance on the assessment of the AEE.

Regular meetings between council officers and AEE practitioners to invite input into developing practice.

APPENDIX 1

INFORMATION AND THE RESOURCE MANAGEMENT ACT A DISCUSSION PAPER

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Introduction

Under the Resource Management Act 1991 (RMA), local government is required to obtain information of an increased scope and complexity compared with that required under the legislative regimes which the act replaced. This has resulted in a number of information issues, chiefly scientific, being raised with the Parliamentary Commissioner for the Environment in the course of a number of investigations.¹⁸ These have included:

- the lack of or inadequate information;
- the lack of credible evaluations of information;
- confidential information unable to be assessed;
- inadequate resources to obtain information;
- lack of expertise to recognise the information required;
- lack of transfer of research findings in a form suitable for local government;
- failure to recognise some information generated by resource consent applicants is a public good;
- the risk of losing a scientific **workforce** which can provide necessary information.

Problems that have been identified with the RMA are largely related to implementation. However, the very nature of the RMA, while empowering local government to set local priorities for promoting the sustainable management of resources and empowering local government to control the undesirable effects of activities, has placed new responsibilities and new stresses on local government. Some of those responsibilities and stresses are due to the information requirements of the RMA.

This paper examines the nature of the information required by the RMA and tries to **identify** who has responsibility for obtaining the information, who benefits and who should contribute to paying for the information.

¹⁸ Assessment of Environmental Effects (AEE): Administration by Three Territorial Authorities.
Administration of Compliance with Resource Consents. October 1996.
Timberlands West Coast Ltd. **Draft** Beech Management Prescriptions: Review Panel Report. December 1995.
Public Participation under the Resource Management Act. The Management of Conflict. December 1996.

The purpose of the paper is to provide a basis for discussion with interested parties. It calls for further information to assist the Parliamentary Commissioner for the Environment to **clarify** with central and local government:

- ≠ the purpose and justification for collecting information;
- ≠ the value of the information required;
- ≠ who has responsibility for providing information;
- ≠ who has responsibility for obtaining and maintaining information;
- ≠ who benefits from the information provided; and
- ≠ who should pay for the information.

Any comments on the paper would be welcome. Information or further enquiries may be directed to:

The Office of Parliamentary Commissioner for the Environment
 PO Box 10 241
 Wellington.
 Phone: [04] 471 1669
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A response by 14 February 1997 would be appreciated.

The Resource Management Act

The Resource Management Act 1991 is innovative legislation. In striving to meet international environmental management standards and comply with the United Nations *Agenda 21*, it is essential that its purpose of sustainable management is achieved.

A great deal of information from a wide range of sources is required to successfully implement the Resource Management Act.

Promoting the purpose of sustainable management requires a knowledge about resources, the interactions between resources, the effects of activities on those resources and the changes taking place in the resources and within the ecosystems supporting the resources. We understand the need for flows of advanced and detailed information in efficiently managing modern business, including manufacturing and transport industries. We do not as yet appear to understand the need for similar flows of advanced and detailed information to achieve sustainable management of natural resources.

The RMA identifies (as listed below) the information requirements for both central and local government but leaves it to local government to define the specific data that needs to be collected and analysed for statutory planning and formulation of policy statements.

- ≠ Information is required by central government (s 24) for the preparation of national policy statements, national environmental standards, water conservation orders and in monitoring the effect and implementation of the Act.

- Regional councils may have to supply information (ss 27, **28A**) to the Ministers for the Environment and of Conservation to enable Ministers to judge the outcome of councils exercising their functions or duties.
- Regional councils require information (s 30) to carry out their functions and in particular for the preparation of regional policy statements (s **60**), regional plans (s 65) and regional coastal plans (s 64).
- Territorial authorities may have to supply information (s 27) to the Minister for the Environment to enable the Minister to ascertain the environmental outcome of territorial authorities exercising their functions.
- The territorial authorities require information to carry out their functions (s 3 1) and in particular in the preparation of district plans (ss 73, 75) in order to promote sustainable management of natural and physical resources.
- All local authorities shall have regard to alternatives and to assess benefits and costs (s 32). This requires further sets of data.
- All authorities have a duty to monitor (s 35). This is a duty not previously imposed by legislation and requires the collection and collation of information for reporting on the state of the environment, the effectiveness of policy statements and plans, and the effect of resource consents on the environment.
- All applicants seeking resource consents (Pt VI) are also required to supply information, including an assessment of environmental effects (Fourth Schedule) to the relevant authority.

Costs are incurred in the gathering and analysis of information required to implement the Act. The information required is both scientific and economic. Scientific information falls into a number of categories. These are:

1. Baseline information about the “stocks” of resources of a district or region, ie the assets, which may be tangible or intangible.
2. Information about the predicted effects of activities on the environment.
3. Information on the actual effects or trends taking place.

For each category of information there are the additional aspects of relevance, reliability and accessibility.

Information must be relevant to the purpose and principles of the RMA. This narrows the information required and provides focus.

Information needs to be reliable. Reliability is not absolute – there is always some uncertainty but all information should come with an estimate of its accuracy or reliability.

Access to information has become increasingly difficult as some is considered confidential to a client and some is beyond the resources of a council to purchase. The responsibility for ensuring this information is obtained lies largely with a local government body. The costs of obtaining the information may rest with the council or an applicant seeking or monitoring the effects of a resource consent, or with both.

Baseline Information

Prior to the commencement of central government restructuring in 1987, a great deal of natural resource information was obtained and held by central government. There was a public policy imperative as well as a scientific imperative to survey, classify and record the country's natural and physical resources.

Development of the natural and physical resource base was seen as the primary means of increasing the nation's wealth (and welfare). The more easily accessible resources were either depleted or developed to their maximum potential and there was a need to find new sources and to identify ways in which they could be efficiently developed.

Information on geology, soils, water, air flora and fauna was provided largely by the Ministry of Works and Development (MWD), the Department of Scientific and Industrial Research @SIR), the NZ Forest Service, Ministry of Agriculture and Fisheries, and the Wildlife Service. Advice on the information was in part provided by the Ministry of Works and Development through the Town and Country Planning Division and the Water and Soil Division. The Town and Country Planning Act 1977 required information that enabled decisions to be made on the wise use and management of resources and the direction and control of development. The Act controlled activities and did not explicitly require assessment of the possible effects of those activities. Similarly, the Water and Soil Conservation Act 1967 required information in order to promote the best uses of natural water, including multiple uses, and to allocate natural water between competing demands. It did not require information on the effects of the use other than to take into account the present and future needs of industry and to have regard to scenic and natural features, to fisheries and to wildlife habitats when planning and advising on the allocation of water. In general, the information and the advice was obtained at taxpayer expense and provided free of charge to local government.

A commentary on the demise of the central government departments with responsibilities for data-gathering programmes and the effect this has had on local government has been given by the Minister for the Environment, Hon Simon Upton. The Minister reported in a speech to the NZ Planning Institute Conference in April 1994 that the Resource Management Act was very resource intensive to get up and running. He **recognised** that central government had devolved many functions to local government while at the same time requiring ambitious environmental objectives to be achieved. He further admitted that social, environmental and economic information was required and that it was inconceivable this could be achieved with existing government resources. However, he also stated that despite central government transferring heavy responsibilities to local government, it did not transfer **funding** and therefore the cost would be passed on to ratepayers.

The Minister estimated that some of that **shift** in expenditure was illustrated by the fact that in 1984/85 central government spent \$46 million on resource management

directly. He stated that central government expenditure on resource management in 1994 was estimated at approximately \$9 million. The Minister did not provide figures for indirect costs, and expenditure related to information obtained by research agencies would have been particularly difficult to identify precisely.

Since 1994 there has been an increase in the 1996 budget allocations for the Ministry for the Environment and the Department of Conservation. Some of the increase is expected to be spent on resource management.

It is noteworthy that the Minister said "I believe information is the key to the success of the RMA. Without baseline data we are in no position to allocate resources, identify what is sustainable and where the trade-offs can be made". He further stated "If we don't have the information we won't be any better off than before".

However, the collection of information needs to be efficient and this requires some prioritisation by the agencies involved. Under the previous legislation, the identification of resource information was reasonably straightforward although it did result in some duplication of natural resource inventories. The RMA has integrated resource management. This needs information not previously required by local government. An example of this is information on environmental health such as the effects of agrichemicals on non-target species including people.

The Minister, in his speech, did not attempt to identify Government funded research, which includes the collection of environmental information. There are several 'databases of national significance' which are now maintained largely in the Crown Research Institutes by funding from the Public Good Science Fund (PGSF). Some policies have been developed by the Ministry of Research, Science and Technology together with the Foundation for Research, Science and Technology as to who owns this information and whether access to it incurs a cost. The question arises as to whether local government should pay for this information in order to discharge monitoring duties under s 35 of the RMA. The Department of Conservation also collects environmental information through operational research. Again, should the ratepayer have to pay for information **funded** by the taxpayer?

There is no doubt that baseline information is crucial for preparing national policy statements and national environmental standards as well as district plans and regional policy statements and regional plans under the RMA. The Minister focused on baseline data but to determine what is sustainable, and the thresholds where management of resources might become unsustainable, requires a whole set of new data including reworking existing data and the identification of appropriate indicators. In many cases the information is dependent on ongoing or to-be-commissioned research. Some of the information will eventuate as the result of consent applicants assessing the effects of activities and some through council monitoring data collected for state of the environment reports.

Effects of activities

The Resource Management Act is effects driven. This is a totally different concept **from** managing activities under the Town and Country Planning Act, where a responsibility was put on the owner of the land to ensure appropriate management of the activity within land boundaries. There was also a responsibility resting with the council as it had the power through the district scheme to direct the location of activities. The onus under the RMA is for the owner of the activity to manage it in such a way that the adverse effects, including those outside land boundaries are avoided, remedied or mitigated. The intention of the Act is to internalise environmental costs to the greatest extent possible by **recognising** that often one party undertaking an activity imposes costs on third parties or on public good resources.

There is an assumption that by separately managing the effects of activities on a number of properties this will collectively deliver more sustainable management of whole ecosystems. However, this will only be possible if there is ecosystem information, such as data on ecological processes, available to each activity owner on a property so that effects can be assessed and, in turn, information **from** the owner is available to the wider community.

An example would be discharge of wastewater to a stream. All landholders downstream of the discharge can benefit from information obtained by the discharger and consent authorities on the ecological processes taking place in the water, on the quantity and quality of the stream and the living organisms that live there. This would be particularly so if a downstream landholder also wants to discharge wastewater. Knowledge of possible cumulative effects and the accumulation of information is essential for local government who have final responsibility to ensure the stream is managed sustainably.

Another example would be land development that could damage a significant historical site. Information obtained about the site and about the effect of the land development on the site provides valuable information for those wishing to protect the national heritage. Similarly, avoiding or mitigating off-target spray **drift** can protect indigenous species on a neighbouring Crown conservation estate as well as managing the effects of that spray drift on the property being managed.

Managing whole ecosystems sustainably requires cooperation between all resource managers and oversight by a council exercising responsibilities under the RMA. When ecosystems become more ecologically sustainable, the whole community benefits. It is then up to each council to determine what proportion of the cost of obtaining the necessary information will be funded through general rates or specific charges.

Responsibility for information

Who precisely has the responsibility for obtaining specific information under the RMA and who should pay for it **have not** been fully debated or, so far, clearly identified. The different categories of information and their interrelationships within an ecosystem context, which are required to implement the Resource Management Act, were not well **recognised** by those who drafted the Act, nor were the implications of where the

costs would fall. A Resource Management Law Reform Working **Paper**¹⁹ identified information needed to allocate property rights and information on non-commercial objectives where the example given referred to the use of non-renewable resources. The focus was on property rights and on the quantity of resources. Effects on resource quality and especially ecosystem quality were not **recognised** as requiring a different category of scientific information.

The user pays/polluter pays principle is accepted. However, all landholders and resource managers benefit from the information that is being generated. In addition, the nation as a whole benefits from a move towards sustainable management of natural and physical resources irrespective of whether this is being achieved in a district or a region.

Recognising that there are a number of beneficiaries from information generated, some councils have, for their own purposes, identified principles that guide how monitoring charges will be imposed. For example, the Manawatu-Wanganui Regional Council's system of charges is based on four principles:

- ⌘ **Consistency:** Charges should not vary greatly between years;
- ⌘ **Matching costs to benefits:** Where benefits are enjoyed by the consent holders rather than the community as a whole, the individual users should pay the costs of administration and monitoring of consents;
- ⌘ **Public good:** For some monitoring (eg surface water flow and groundwater monitoring) there is a strong element of public good. In such cases, two-thirds of the net cost of monitoring programmes are met from the general rate and one-third from consent holders;
- ⌘ **Equity:** Classes of users should be treated in the same manner (eg travel costs are charged uniformly, irrespective of location).

For reasons of efficiency and responsibility it may be more appropriate for information to be collected (or funded) by a central agency rather than duplicating the process by each local authority. If the benefits of environmental protection are to society as a whole, then this is an argument for payment being made by central government.

Position of the Crown

The anomalous situation is that of the Crown, which benefits from the effects of sustainable management on the Crown **estate**²⁰ but contributes only a limited extent to the costs faced by local government to collect baseline information, evaluate predictions of effects, and monitor the trends occurring in their district or region. There are also taxpayers, who are not ratepayers, who benefit from New Zealand attaining sustainable management of natural and physical resources.

The Ministry for the Environment's document *Environment 2010* **recognises** as part of the Environmental Management Agenda a goal "to achieve a comprehensive and

¹⁹ **RMLR** Working Paper No. 1, **MfE**, July 1988. Fundamental Issues in Resources Management.

²⁰ The Crown estate comprises all Crown land including land managed by the Department of Conservation which comprises 30 percent of New Zealand's land area.

reliable information base on the environment, which will aid informed and sound decisions on the protection and sustainable management of New Zealand's natural and physical resources".

One proposal for action is monitoring the environment. The document states "though environmental monitoring is principally a local government activity, the government has a role in encouraging standard approaches that provide an accurate picture at a national level. Central government should cooperate with local government to develop a core set of environmental indicators which assist in monitoring key aspects of environmental quality" Developing these indicators requires a knowledge of the natural resources and the environmental processes that occur. Monitoring the changes in the environmental indicators enables identification of changes in ecological health, for example, some water quality parameters may be known to **affect** the survival of key insects in an aquatic ecosystem. Measurement of these parameters can give an early warning of thresholds at which resource use might be becoming less sustainable.

The establishment of indicators for national state of the environment reporting should enable local government to establish complementary indicators. As already discussed, local government will be monitoring trends that will assist in reviews of regional policy statements and district plans. Whether environmental indicators for these purposes will also serve as national indicators has not been determined. However, local government may be required (under s 27) to give this type of information to the Minister. The question remains whether local government should be compensated for putting scarce financial resources into information gathering and analysis that is the responsibility of central government.

The information needed for sustainable management of nature resources requires expertise to obtain and analyse that information. It does not come without cost.

There continue to be claims that the revenue obtainable by local government fails to meet the costs of the RMA.

The proposition is that as well as the user paying, all citizens should contribute to the cost of obtaining, evaluating and managing information on environmental effects. In that way, all landholders, urban and rural, private and public, contribute to the environmental health of a district or region and are thus part of a community of interest. The administrators of the DOC "conservation farm" in a region or the Crown land in a city have as much interest in the future well-being of the district as their neighbouring property owners. When a property owner is exempted from paying rates while enjoying the benefit of community-provided services, there is a reduced sense of the property owner seeing itself and being seen by others as a member of the community. The Crown, as a land owner, is sometimes seen in this light - an absentee owner, not contributing directly via rates and sometimes considered as not providing a fair share of resource protection monitoring data.

Another aspect pertaining to the Crown is the lack of statutory requirements, compared to those for local government, to supply resource information. There are no statutory timelines for implementing monitoring and no requirements to coordinate and analyse data. The New Zealand environmental databases are national assets and our ability to maintain those national databases is believed to be limited.

Conclusion

I believe there is some urgency in having the costs and benefits of responsibilities for various types of information under the Resource Management Act clearly defined and apportioned. New Zealand has devolved responsibility for promoting sustainable management to local government with relatively limited investment from central government. The Mayors of Auckland have made it clear, as has West Coast local government, that they believe the Crown has a duty to contribute to the environmental health of districts and regions. The Crown and local government could periodically negotiate over the price paid by the Crown for services it receives from the local government organisation. (An assessment of the services and their value would be a prior requirement.) This would assist considerably in bringing about the desired partnership between central and local government. It might also, by strengthening local government resources, result in better maintenance of the scientific workforce which provides the information necessary for sustainable management of natural and physical resources.

There is a need to determine:

- ⌘ who should obtain and maintain each type of information required under the RMA;
- ⌘ who should provide the information;
- ⌘ who benefits **from** the information; and
- ⌘ who should pay.

APPENDIX 2

Responses to the PCE Discussion Paper

2.1 Distribution and returns

The discussion paper was distributed to both local government mayors and chairpersons (86), and to all CEOs (86), and to a selection of Science Institutes and Government Departments (32) on 25 November 1996 with a request for comments to be returned by 14 February 1997.

A total of 52 responses were received by 12 March 1997 from the 204 letters sent, as follows:

Central government agencies	10
Regional councils	5
Territorial authorities	26
CRI's and national bodies	6
Professional associations and individuals	5
Total	52

2.2 Responses

In general the submissions were useful and explained the submitters' views on the issues raised by the discussion document. Only about 6 - 8 submissions merely confirmed support for the general theme of the discussion paper and offered minimal comment.

The theme of the paper revolved around the issues of

- who should obtain and maintain each type of information required under the RMA;
- who should provide the information;
- who benefits from the information; and
- who should pay.

There was general agreement that these were appropriate questions and some submissions were specifically structured in response to these issues. However the majority more or less followed the structure of the paper but most frequent comment was made in the costs/funding area. About a quarter made comments addressed to specific paragraphs of the paper.

A frequent criticism of the paper was that information issues were wider than the paper's apparent assessment that they were "chiefly scientific". Economic, social and cultural information are also relevant for environmental monitoring.

Several submissions disputed the paper's claim that it examined the nature of information required by the RMA.

2.3 Common issues in submissions

Cost/funding

- ⌘ Nearly all submissions had comments on costs or **funding** of information
- ⌘ There are a great variety of comments **from** all public funded to all user pays
- ⌘ There are two government initiatives in this area
 - ⌘ SSC ▪ Policy framework for Government held information
 - ⌘ Crown Company Monitoring Advisory Unit ▪ CRI policies for national databases and collections
- A more detailed assessment of the submissions is required in this area
- ⌘ Level of **funding** and general resources

Information definition

- ⌘ A clear definition of RMA information requirements is needed
- ⌘ Economic, social and cultural information is as relevant as scientific information
- ⌘ Indicators about which information should be collected should be developed/identified
- ⌘ Privacy issues will need addressing
- ⌘ Christchurch City Council has developed a table of Resource Information Requirements that could be a useful model
- ⌘ *Aust J of Env Management* March 1995 vol2 p40 Creating an EIA data base may be of assistance
- ⌘ Information Content of an Environmental Management Data Base. PCE file ADM 1105 3 1/10/95 ditto

Information quality

- ⌘ Quality and consistency of information needs to be assured
- ⌘ National standards are required for the methods of collection, processing and storage formats

Information Cooperation

- ⌘ Cooperation among local authorities in identifying research requirements and collectively tendering for 'science'
- ⌘ Cooperation in data collection among all agencies in both central and local government
- ⌘ Cooperation in information and data sharing
- ⌘ National policy statements and guidelines required in the area of RM information
- ⌘ Development of an information strategy (IT) for environmental information (Environment Australia databases, and Management of Government Information as a National Strategic Resource ▪ Aust Internet sites)

Other

- ⌘ Science ability not available in local government
- ⌘ PGSF concerned with 'science' outcomes not environmental management
- ⌘ Strong central leadership needed
- ⌘ State of the Environment Reporting could provide a focus for information

APPENDIX 3 CRITERIA FOR ANALYSIS OF CASE STUDY RESOURCE CONSENTS

Was sufficient information about the likely effects on the environment provided with the resource consent application?

Was sufficient information about the proposed activity provided by the applicant?

Did the applicant/consultant approach the council prior to lodging the application?

What was the council's response to the provision of insufficient information?

Did the council **verify** the information provided?

Was further information required and what was the nature of that information?

Did the council review the information provided, either internally or externally?

Was written approval from potentially affected parties sought for non-notified applications?

Did the submitters add significant new information or issues to the consideration of the application?

Was an officer report prepared for the council decision maker?

Was sustainable management of the water resource addressed?

Were the submitter's concerns/information reflected in the draft consent conditions?