Copyright is owned by the Author of the thesis. Permission is given for a copy to be downloaded by an individual for the purpose of research and private study only. The thesis may not be reproduced elsewhere without the permission of the Author.
ENVIRONMENTAL DISPUTE RESOLUTION
AND CONSULTATION WITHIN THE RMA
- A CASE STUDY -

THE FITZHERBERT AVENUE, CROSS RIVER
TRANSPORTATION DISPUTE.

A thesis presented in partial fulfilment of a Master of Philosophy
in Resource and Environmental Planning at Massey University.

1988

Jane Ellen Johnston.
This thesis examines how democratically described new and revolutionary ideas came to be elucidated in the resource and environmental management framework provided within the Resource Management Act, 1991, and considers how they are given effect in current planning practice. The research focuses on consultation which seeks to resolve environmental disputes not only to achieve sustainable environment outcomes in an ecological sense, but also to give greater expression to democratic principles.

This research undertaking is in response to a continually reiterated need to evaluate the effectiveness of planning practice in achieving its aims, together with a necessity to then take appropriate responses to the results of the evaluation, for instance as found within the Resource Management Law Reform reports of the 1980's, in planning publications, as well as in the Resource Management Act, 1991, itself.

This thesis identifies the principles and objectives intended and anticipated to be realized through public participatory planning and environmental dispute resolution processes. It provides a theoretical framework for consideration of consultation and environmental dispute resolution processes, as it explores theory informing the characteristics of environmental disputes, and also the different types of consultation process able to be utilized for dispute resolution.

The efficacy of resource and environmental management in achieving the principles underpinning, and objectives of, public participation in EDR processes is evaluated by consideration of participant perspectives of consultation processes. This research identifies and analyzes the benefits and strengths, problems and limitations experienced by participants in a variety of EDR processes that were employed to resolve a particular dispute - the 'Fitzherbert Avenue - cross river transportation dispute' - in Palmerston North, as a case study.

An analysis between expectations and experience is extrapolated into an indicator of whether these EDR processes are achieving the RMA's intentions, in terms of the principles and objectives which necessitate public consultation. This research also provides some explanation for the experiences of participants, thereby indicating how and why the underlying principles and objectives are or are not being met.

The research conclusions address the question, 'how well were the principles and objectives of consultation, within the context of the RMA, given effect or realised in practice?'. In drawing conclusions this thesis explores the uniqueness of a case study, but also identifies RMA implementation issues of more general relevance and interest.

Analysis of generic RMA implementation issues describes consistent themes that indicate more needs to be done to effectively achieve the objectives of the RMA, as there are concerns about the abilities of planning practice and those responsible for implementing the Act to realise all its intentions. Concerns of relevance to consultation processes are discussed and suggestions for improving practical implementation of the RMA are made.
ACKNOWLEDGEMENTS

I wish to acknowledge and thank the many people who participated in this research. They include staff and Councillors of Palmerston North City Council, and also a number of consultants. Due to confidentiality agreements I cannot mention these people by name, but extend my gratitude to you for your thoughtfulness and candour in providing your observations, experiences, and perspectives for this research.

I also extend my gratitude to the citizens of Palmerston North who participated in this research, including: Bob Armitage, Mark Bell-Booth, David Dougherty, Richard Garland, John Hawley, John Hogan, Evan Lange, Christine McAlpine, Gwen and Roger Morris, Heather Murphy, Grant Neilson, Nigel Perry, Malcolm Prince, Graeme Reece, Peter and Lesley Reed, and Chris Robertson. Thank you for your time, which for a number of you was considerable, and the depth of your personal considerations on behalf of this research.

I thank the records staff at Palmerston North City Council for assistance in locating background material about the case study, and the photography staff of the "Manawatu Evening Standard", for allowing me to reproduce your photographs within this thesis.

I am also grateful to Audrey and Peter Johnston, Karen and Grant Shepherd, and to Stephen Kelleher for taking turns to support me during this undertaking. I appreciate that you 'lent me your ears', at times showed real interest in the topic and my endeavour, but most of all that I was able to stay and work at your homes for a while. I would also like to thank the other members of my family and most of my friends for not wanting to talk about this research, and for 'encouraging' me to continue to do other things.

Finally, I sincerely thank my supervisor, Peter Horsley for your guidance and encouragement in completing this thesis. Your observations about the topic have been greatly appreciated, as have your comments on the draft. I have enjoyed sharing this learning experience with you.

Thank you all for all your participation, your perspectives and your help.
# TABLE OF CONTENTS

ABSTRACT  
ACKNOWLEDGEMENTS  
TABLE OF CONTENTS  
LIST OF FIGURES, PLATES AND TABLES  
ABBREVIATIONS USED

## SECTION I  RESEARCH PROBLEM AND METHODOLOGY

### CHAPTER 1  INTRODUCTION

1.1 Research Problem ..................................................... 1  
1.2 Research Aim ........................................................... 3  
1.3 Research Objectives ................................................... 3  
1.4 Research Approach .................................................... 3  
1.5 Research Methods ..................................................... 8  
1.6 Structure of the Research Interviews ................................ 11  
1.7 Case Study Research Strategy ........................................ 13  
1.8 Thesis Outline ......................................................... 14

## SECTION II  SETTING THE CONTEXT FOR EDR

### CHAPTER 2  RESOURCE AND ENVIRONMENTAL MANAGEMENT REFORM

2.1 Resource and Environmental Management Law Reform .................. 16  
2.2 The Environmental Problematique ....................................... 17  
2.3 Why Manage Resources and the Environment? ............................ 18  
2.4 New Zealanders Initiate and Undertake Reform .......................... 21  
2.5 Common Themes Conveying Problems and Shortcomings  
of the System Prior to Reform ........................................... 24  
2.6 Principles Informing Public Participation in EDR Processes ............ 26  
2.7 Initial Proposals for Constitutional Reform for Environmental Management  
Indicated What the New Framework Ought to Aim to Achieve ............... 30  
2.8 Conclusions From the Reform Process .................................. 33
CHAPTER 3 CONSULTATION AND PUBLIC PARTICIPATORY PLANNING

3.1 Generic Purposes of Public Consultation ............................................. 36
3.2 The Question of 'Why Public Participatory Planning?' .......................... 38
3.3 The Question of 'Who?' in Public Participatory Planning ...................... 40
3.4 The Question of 'What is Consultation / Public Participation?' ............... 41
3.5 Basic Principles and Objectives of Public Participation ......................... 43
3.6 Measuring the 'Effectiveness' of Consultation in Achieving Its Principles and Objectives .......................................................... 45

CHAPTER 4 THE RESOURCE MANAGEMENT ACT, 1991

4.1 Institutional Context of the RMA, 1991 ............................................. 47
4.2 Sustainable Management of the Environment in the RMA ...................... 47
4.3 Principles Stated Within Part II of the RMA ........................................ 50
4.4 Opportunities for Public Participation within the RMA ......................... 51
4.5 Assessment of Environmental Effects as a Vehicle for Public Participation .......................................................... 53
4.6 Alternative Dispute Resolution Within the RMA .................................. 56
4.7 Conclusions on the RMA's Context for Public Participation .................... 58

CHAPTER 5 CHARACTERISING ENVIRONMENTAL DISPUTES

5.1 Sources of Resource and Environmental Conflict .................................. 59
5.2 Causes of Environmental Dispute ....................................................... 61
5.3 A need to Identify the Sources and Causes of Dispute ............................ 64
5.4 Recognising the Characteristics of Public Disputes ................................ 65

CHAPTER 6 ENVIRONMENTAL DISPUTE RESOLUTION

6.1 Artistry in Dispute Resolution ............................................................. 69
6.2 Patterns of Behaviour Related to Conflict ............................................ 69
6.3 Categorising Environmental disputes and resolution forums .................. 70
6.4 Forums for Undertaking an EDR Process ............................................ 71
6.5 Defining Environmental Dispute Resolution (EDR) ............................... 76
6.6 Resolution Within ADR Approaches ................................................... 80
SECTION III THE FITZHERBERT AVENUE - CROSS RIVER TRANSPORTATION CASE STUDY

CHAPTER 7 THE EMERGENCE AND CONTEXT OF CONFLICT

7.1 History and Context of the Fitzherbert Avenue - Cross River Transportation Case Study ........................................... 96
7.2 Problem Framing in the Past and Within the Dispute Context .......... 102
7.3 The Emergence of Conflict ........................................... 103
7.4 The Sources of Conflict ........................................... 115
7.5 The Primary Causes of Conflict in this Case Study ..................... 116
7.6 The Secondary Causes of Conflict in this Case Study ................ 116
7.7 The Tertiary Causes of Conflict in this Case Study ................... 127
7.8 Public Dispute and a State of Impasse ................................ 129
7.9 Conclusions on the Sources and Causes of Environmental Dispute in this Case Study ........................................... 134

CHAPTER 8 THE TREATMENT OF ENVIRONMENTAL DISPUTE IN THIS INSTANCE - EDR PROCESSES EMPLOYED

8.1 Part B of the Research Interview: Planning Processes ..................... 137
8.2 Impasse Caused by an Impediment to Implementation of the LTDP ..... 137
8.3 The Resource Consent Process ........................................... 138
8.4 The Working Party Consensual Process .................................... 150
8.5 The Proposed District Plan Process .................................... 162
8.6 Change to the Transitional District Plan Process .......................... 165
8.7 Public Protest and Direct Action ........................................... 175
SECTION IV  ANALYSIS OF PERSPECTIVES OF EDR PROCESSES

Part D of the Research Interview ............................................. 177
Distinction Between Formal and Informal EDR Processes Within the Analysis... 177
Distinctions Based on the Role of Participants: Perspective Dependent
and Perspective Independent Observations .................................. 177

CHAPTER 9  BENEFITS AND STRENGTHS OF FORMAL EDR PROCESSES

9.1 Resolution of Issues is Very Focused Within the Hearing Forum ........ 179
9.2 The Period 'From Public Notification to the Hearing' .................... 179
9.3 Differences Between the Two Formal Hearings .......................... 186
9.4 Benefits and Strengths of the Hearing Process ......................... 187
9.5 CONCLUSIONS .................................................................. 192
9.6 Additional Explanations ..................................................... 194

CHAPTER 10  PROBLEMS AND LIMITATIONS OF FORMAL EDR PROCESSES

10.1 Problems and Limitations of Formal EDR Processes .................... 195
10.2 CONCLUSIONS .................................................................. 223
10.3 Additional Explanations ..................................................... 228

CHAPTER 11  BENEFITS AND STRENGTHS OF THE INFORMAL (ADR) PROCESS

11.1 Benefits and Strengths of ADR or Informal EDR Processes ............ 231
11.2 Additional Explanations for the Benefits and Strengths of ADR ...... 250
11.3 CONCLUSIONS .................................................................. 256
11.4 Summary of Additional Explanations ..................................... 261

CHAPTER 12  PROBLEMS AND LIMITATIONS OF THE INFORMAL (ADR) PROCESS

12.1 Problems and Limitations of ADR Processes in Practice ............... 262
12.2 Additional Explanations for Problems and Limitations
of ADR Processes ................................................................... 300
12.3 CONCLUSIONS .................................................................. 318
12.4 Summary of Additional Explanations ..................................... 323
SECTION V  SYNTHESIS OF FINDINGS AND CONCLUSIONS.

CHAPTER 13  SYNTHESIS OF FINDINGS

13.1 Synthesis of Findings on the Sources and Causes of Conflict .................. 326
13.2 Analysis Between the Theoretical Characteristics of Formal EDR Processes and the Characteristics Observed in Practice ............. 330
13.3 Analysis Between the Theoretical Characteristics of Informal (ADR) Processes and the Characteristics Observed in Practice .......... 340
13.4 Research Participants' Suggestions for Improving Consultation / Public Participation and EDR Processes ............................................. 351

CHAPTER 14  CONCLUSIONS

14.1 The Research Problem and Aim .......................................................... 356
14.2 Common Themes Identified During the Reform Process ......................... 357
14.3 Monitoring and Assessment: Were the Principles and Objectives of Consultation Realised in Practice? ................................. 358
14.4 In What Ways Did the Formal Consultation Processes (which applied a Judicial Approach to EDR) Give Effect to the Principles and Objectives of Consultation? ...................... 359
14.5 Concluding Assessment of the Formal Process ..................................... 366
14.6 In What Ways Did the Informal or ADR Process (which applied a consensual approach to EDR) Give Effect to the Principles and Objectives of Consultation? ............................ 366
14.7 Concluding Assessment of the Informal ADR Process ............................ 373
14.8 Problems Associated With Monitoring the Efficacy of Consultation Processes ................................................................. 373
14.9 Observations About Implementation of the RMA ................................. 374
14.10 Concluding Comment ........................................................................... 413

BIBLIOGRAPHY

APPENDICES
LIST OF FIGURES, TABLES and PLATES

Figures

Figure 1: The Case Study Research Strategy ................................................................. 13
Figure 2 "Opportunities for Dialogue in the Resource Consent Decision Process" ................................................................. 52
Figure 3: "The Spiral of Unmanaged Conflict" ................................................................. 66
Figure 4: "A Continuum of Conflict Management and Resolution Approaches" .... 76

Tables

Table 1 Describing "Consultation" .................................................................................. 42
Table 2 The Principles and Objectives of Consultation Processes ............................................. 43
Table 3 The Characteristics of Public Disputes .................................................................. 65
Source: Carpenter & Kennedy (1988)
Table 4 Steps in the Development of Conflict .................................................................. 67
Source: Carpenter & Kennedy (1988)
Table 5 Problems and Limitations of the Formal / Judicial Approach identified in the literature review ................................................................. 73
Table 6 The Issues Relevant to the Resolution of this Dispute ................................................... 128
Table 7 Sequence of Consultation / EDR Processes Employed ................................................ 133
Table 8 The Progress of the Resource Consent Application ..................................................... 141
Table 9 Councillors' Considerations on the Pros and Cons of Establishing an ADR Process in the Form of a Working Party Approach .................................................. 147
Table 10 Conclusions on the Benefits and Strengths of Formal EDR Processes ...................... 192
Table 11 Summary of Explanations for the Benefits and Strengths of Formal Processes ................ 194
Table 12 Conclusions on the Problems and Limitations Within Formal or Required Consultation/EDR Processes .................................................. 223
Table 13 Additional Explanations for the Problems and Limitations Within Formal or Required Consultation / EDR Processes .................................................. 228
Table 14 Conclusions on the Benefits and Strengths of the Informal (ADR) Process ........................................ 258
Table 15 Summary of Additional Explanations for the Benefits and Strengths of the Informal (ADR) process ................................. 261
Table 16 Participants' Perspectives on Whether the Problem was Well Defined or of Sufficient scope ........................................... 271
Table 17 Conclusions on the Problems and Limitations Within the Informal (ADR) Process ................................................... 318
Table 18 Additional Explanations for the Problems and Limitations Within the Informal (ADR) process ........................................ 323
Table 19 Research Participants' Suggestions for Consultation and EDR in the Future ............................................................ 351
Table 20 In What Ways did the Formal Consultation / EDR Processes Give Effect to the Principles and Objectives of Consultation? ........ 360
Table 21 In What Ways did the Informal (ADR) Process Give Effect to the Principles and Objectives of Consultation? ..................... 367

Plates

Section III The Cross River Transportation Fitzherbert Avenue Case Study
[Photograph source: McAlpine, C. Secretary of Save the Avenue]
Plate 1 Roading Layout of the Fitzherbert Avenue and Bridge Area ............. 97
Source: Department of Lands and Surveys, 1989
Plate 2 A section of Fitzherbert Avenue showing the design layout at the time the dispute emerged in 1993 ........................................ 99
Source: Manawatu Evening Std. Ltd., reproduced with permission
Plate 3 A section of Fitzherbert Avenue showing atypical morning commuter traffic conditions ..................................................... 99
Source: Manawatu Evening Std. Ltd., reproduced with permission
Plate 4 Public protest activity prior to felling trees in the Avenue .................. 175
Source: Manawatu Evening Std. Ltd., reproduced with permission
Plate 5 Public protesters gather in the Avenue as the first trees are felled ...... 175
Source: McAlpine C.
Plate 6 Avenue Action sets up office in a tree during 1997 .......................... 175
Source: McAlpine C.
Plate 7 The 4 laned Fitzherbert Avenue at the end of 1997 .......................... 176
Source: Manawatu Evening Std. Ltd. reproduced with permission
LIST OF APPENDICES

Appendix I  Correspondence with Research Participants: Introductory letter, Research Information Sheet, Research Consent Form, Semi-Structured Interview Schedule and Covering Letter.

Appendix II  Summary of Principles and Objectives of Consultation and EDR processes.

Appendix III  Sections of the RMA Informing Public Participation or Consultation in Decision Making and EDR Processes.

Appendix IV  Schedule IV Assessment of Environment Effects.

Appendix V  Section 96  Making a submission
Section 99  Pre-hearing meetings
Section 100  Obligation to hold a hearing
Section 104  Matters to be considered
Section 268  Additional Dispute Resolution.

Appendix VI  History of the Fitzherbert Avenue Trees.

Appendix VII  Historical Responses to the Cross River Transportation Issue.

Appendix VIII  The Policy and Ordinance 'protecting' Fitzherbert Avenue Trees, contained in the Palmerston North Transitional District Plan.

Appendix IX  The Facilitator's "Terms of Engagement" & The Cross River Transportation Working Party's "Terms of Reference".

Appendix X  The Facilitator's introduction to, and the "CRTWP Final Report".

Appendix XI  Council's Information Brochures Disseminated To All Households.
"Crossing the Manawatu River" and,
"Fitzherbert Avenue: Planning for the next century"
ABBREVIATIONS USED

AEE  Assessment of Environmental Effects  
CBA  Cost Benefit Analysis  
CRT  Cross river transportation  
CRTLG  Cross River Transportation Liaison Group  
CRTSG  Cross River Transportation Staff Group  
CRTWP  Cross River Transportation Working Party  
EATG  Environmental Administration Task Group  
ETG  Environmental Task Group  
G&SC  Goals and Strategies Committee  
IEM  Integrated environmental management  
LGNZ  Local Government New Zealand (organisation)  
LTDP  Long Term Development Plan for Fitzherbert Avenue (1988)  
MfE  Ministry for the Environment  
NGO  Non-government organisation  
NZ  New Zealand  
NZPI  New Zealand Planning Institute  
PCE  Office of the Parliamentary Commissioner for the Environment  
PDP  (Palmerston North City Council's) Proposed District Plan  
PEFWP  Post Environmental Forum Working Party  
PNGHS  Palmerston North Girls High School  
RMA  Resource Management Act, 1991  
RMLA  Resource Management Law Association  
RMLR  Resource management law reform (process)  
RMLRWP  Resource Management Law Reform Working Papers  
TDP  (Palmerston North City Council's) Transitional District Plan  
UNCED  United Nations Committee on Environment and Development