Participation by Non-experts in Resource Management Decision-making

A thesis presented in partial fulfilment of the requirements for the degree of

Master of Resource and Environmental Planning

at Massey University,

Palmerston North, New Zealand

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2013

Abstract

The 2009 ‘simplification and streamlining’ amendments to the Resource Management Act 1991 changed the way proposals of national significance are processed. The most significant of these reforms were the establishment of an Environmental Protection Authority to manage national consenting processes, and the introduction of a fast-track, nine month processing timeframe where an application is to be decided by a board of inquiry.

The national consenting process retains the same right of any person to participate in the decision-making process as for proposals decided through a conventional process, by a local authority. However, there is widespread concern that the size of the proposals decided by boards of inquiry, coupled with the strict time constraints for decision-making, reduces the opportunities for affected and interested community members, particularly those without relevant personal expertise or the means to employ technical, planning or legal advice, to participate in board of inquiry decision-making.

Case study research comparing two consent processes, the Cambridge Expressway (a conventional consenting process) and Waterview Connection (a national consenting process), found that there were significantly greater barriers to participation by non-expert submitters in the national consenting process. These included difficulties in dealing with substantially increased quantities of documents and information during the process, particularly when coupled with limited and inflexible timeframes. The weight accorded to the contribution of non-expert submitters in comparison to expert evidence by the decision-makers was also significantly less in the report of the Board of Inquiry into the Waterview Connection proposal than in the decision of the Hearing Panel for the Cambridge Expressway.

Note on abbreviations

The following abbreviations have been used for terms and phrases referred to extensively throughout this document:

Environmental Protection Authority	EPA
New Zealand Transport Agency	NZTA
No date	n.d.
No page number	n.p.
Resource Management Act 1991	RMA
Road(s) of national significance	RONS
Section (of an act)	s
State Highway	SH

All references to sections of legislation, unless otherwise stated, are to the RMA.

Acknowledgements

I would like to take this opportunity to thank the many people who have supported me in completing this research. Firstly my supervisor, Dr Christine Cheyne; your unfailing, enthusiasm and support, and wonderful attention to detail has been inspirational. Thank you to all those from NZTA and its consultants who helped, especially Brad Moore for your suggestions, contacts, and interest. To Kylie Paine, thanks for all the trouble you went to, to provide me with a copy of your dissertation.

Thanks to my long-suffering friends, especially Michael for genuinely wanting to know the answers to how it was going and talking me through a number of sticky patches. To my colleagues and friends at Horizons, thank you for asking, for listening, for proof-reading, for sorting out Word when it was thinking for itself… In particular, thanks to Clare for cracking the whip and sharing your knowledge and experience, and to Kathryn and Rachel for licking it all into shape.

I couldn't have finished this thesis without my family's love and support. A special thanks to my father, Ron Tucker, and to Francie Campbell for your practical support and your faith that I'd get there in the end. To my sons, Ed, Harry and Jake Lilley, I'm sorry for all the times I growled when you played your music or tentatively opened the study door. Thank you for all the cups of coffee. And finally, to my husband, Dr Spencer Lilley, thank you for showing me what was possible, for your patience, and for your unwavering support and your confidence in me. I promise not to do it again.

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1. Introduction

1.1 Introduction

New Zealand's Resource Management Act 1991 (RMA) has been and has been amended numerous times by successive governments. One of the most significant amendments was the National-led Government's 'Phase I' reforms[1], which came into effect in October 2009. These reforms were to 'simplify and streamline' the resource consenting processes, particularly the processes for nationally significant proposals.

The 2009 amendment provided an alternative decision-making process (dubbed the 'national consenting process') to the conventional local authority-managed process and made it easier for applicants to choose this. Also referred to as the 'call-in' process, the power of the Minister for the Environment to identify projects of national significance and refer them to the Environment Court or a board of inquiry to decide had been available since 2005[2] but had rarely been used. The amendment established an Environmental Protection Authority (EPA) to manage the national consenting process, and introduced a nine month time limit for boards of inquiry to release a decision. This research examines the impact of 'simplified and streamlined' national consenting process on the participation of non-expert submitters in resource consent decision-making processes.

Since becoming involved in planning issues I have had a strong interest in how ordinary people understand and use their right to participate in resource management decision-making processes under the RMA. It wasn't until I began practising as a planner and attending consent hearings that I realised how few people choose to exercise those rights, and how daunting it could be to do so. I became interested in barriers to participation, and why some lay submitters, some of whom are motivated to spend their time, energy and money and contribute to resource management processes again and again, seemed to struggle to understand these processes and their role within them. I found myself telling prospective submitters to consent applications I was managing where they could find advice on how to make an effective contribution. This research stems from those experiences, and the concerns widely expressed by planning practitioners, including in the conference papers discussed in

[1] Resource Management (Simplifying and Streamlining) Amendment Act 2009.
[2] Introduced by the Resource Management Amendment Act 2005. Under the RMA prior to the 2005 amendment, the Minister for the Environment had always had the power to 'call in' a proposal of national significance and make a decision on the resource consents him or herself (s 140).

Chapter 3, that board of inquiry decision-making will increase the barriers to participation by making the whole process more difficult, rushed and formal.

1.2 Research question

The question posed by this research is 'What has been the effect on non-expert participation in environmental decision-making in New Zealand of the 2009 'simplifying and streamlining' reforms of the RMA?' To answer the question, the 'simplified and streamlined' board of inquiry consent decision-making processes managed by the EPA will be investigated and compared to the conventional consenting pathway.

A comparative case study approach will be utilised. The two cases are the Cambridge Expressway, a conventional consenting process managed by the local authorities and decided by a council-appointed hearing panel, and the Waterview Connection proposal that went through the national consenting process managed by the EPA and decided by a board of inquiry. The main method will be document analysis focused on non-expert submitters and their experiences at common points in the process: submissions; pre-hearing; hearing; and decision.

This research is timely. The national consenting process is being well utilised: at the time of writing[3] five proposals are before boards of inquiry, five proposals have been decided, two decisions are under appeal and the EPA has made its recommended that another application be referred to a board of inquiry. While Ministers for the Environment since 2009 have declared the process to be a success in providing for participation in the process while giving certainty to applicants, providing "an opportunity for all interested parties to have their views considered, while ensuring a robust and timely decision is made" (Smith & Wilkinson, 2011, n.p. See also Adams 2013a; 2013b),- no research has yet been published on how well it really provides for "participation of all concerned citizens, at the relevant level…[and e]ffective access to judicial and administrative proceedings" (United Nations, 1993, p. 10), a principle of sustainable development which underpinned the RMA. Despite the Ministers' confidence, concerns have been raised in a number of quarters, including planners and consultants acting for applicants (Cronwright, Linzey, & Vince, 2011), about the barriers the national consenting process creates for people potentially affected by the large proposals being decided.

[3] October 2013.

1.3 Language

The English language is rich in synonyms. However, there are subtle differences in the meanings attributed to words that are often used interchangeably. This is true of the language used to describe participation in planning processes (Zehner & Marshall, 2007), leading to misconceptions and misunderstandings for participants regarding what it is they are participating in, and their role in the process.

For the purpose of this research, I have chosen to use certain words consistently throughout the analysis and discussion. When referring to the range of activities associated with the spectrum of engagement with resource management processes (for example 'consultation' and 'collaborating'), I have used the 'participation' as a generic term. Likewise, I have used the generic term 'participants' when discussing the range of actors in resource management processes, including submitters, experts and lawyers.

I have used 'non-expert submitter' to describe the subject group in the case studies. This term clearly distinguishes between submitters who have no specific area of expertise relevant to the content of their submission, and who have therefore not provided 'evidence' themselves or by employing planning, legal or technical expertise to represent their interests to the hearing (consistent with the Environment Court's Practice Note (Environment Court of New Zealand, 2011) and the Board of Inquiry into the New Zealand Transport Agency Waterview Connection Proposal minute describing the difference between evidence, expert evidence, advocacy, and representations and submissions (Board of Inquiry into the New Zealand Transport Agency Waterview Connection Proposal, 2010a). The term non-expert is more precise than 'lay' or 'public', which can include those who have no expertise themselves but may or may not employ expertise. Where other terms are used they indicate that a broader group of participants than the subject group is being discussed.

1.4 Overview of thesis

Chapter 2, following this introduction, outlines the background to this research. It provides an overview of the legislation and international principles of sustainable development that underpin public participation in resource management decision-making in New Zealand, and the different provisions made for deciding nationally significant development proposals. Chapter 3 reviews the available

published research on the EPA, which is focused predominantly on the institutional arrangements and functions of the EPA. Chapter 3 also covers some frameworks of public participation that have been applied to planning processes, and barriers to public participation in resource management decision-making in New Zealand.

Chapter 4 discusses the research method and the documentary evidence the thematic analysis was based on. This chapter includes a discussion of how the cases were chosen and the documents identified, how the non-expert participants were defined, and the constraints involved in comparing two cases that are significantly different in size. Ethical considerations are also outlined.

Chapter 5 is a detailed analysis of the two case studies: the Cambridge Expressway and Waterview Connection proposals. A brief background to each case is provided, and the analysis that follows is focused on the applications, submissions, submitters and their concerns, consultation, hearings and decision reports, and the experiences of non-expert participants that these aspects of each case reveal. The following chapter discusses the findings from the analysis within the context of the literature reviewed in Chapter 3. Chapter 7, the conclusion, summarises the main findings and identifies further research that could contribute to the understanding of the impact of RMA reforms on resource management decision-making.

1.5 Conclusion

There is widespread interest, concern and debate about the RMA and its ability to balance protection of New Zealand's environment with economic growth and development. At the time of its enactment in 1991, public participation was considered to be a vital component of environmental planning and decision-making. There was considerable international recognition of this aspect of the RMA. However, amendments to the RMA since 2009 are regarded by many as diminishing the rights of the public to participate.

The aim of this thesis is to investigate whether these concerns have substance. In particular, the research examines the impact on public participation of the new national consenting processes.

2. Background

2.1 Introduction

This chapter considers significant legislation and international principles of sustainable development that have underpinned public participation in resource management decision-making in New Zealand over the fifty years, and the different provisions made for deciding nationally significant development proposals. It provides an overview of resource management decision-making prior to 1991, including the National Development Act 1979, and the programme of law reform that resulted in the RMA. Subsequent reforms, in particular the 2009 'phase I' which established the EPA, and the ongoing 'phase II' reforms are also discussed.

New Zealand's RMA was passed in 1991 following an extensive review of the Town and Country Planning Act 1977 and related resource management statutes. This wide-ranging reform was known as Resource Management Law Reform (RMLR). The National Party elected to govern in 2008 had clearly stated, as Party policy, their intention to "introduce our Resource Management reform bill in the first 100 days of a new National Government" (Smith, 2007, n.p.). The 2009 amendments resulting from that Government's RMA ('Phase I') reform represented a significant change to where resource management decisions for projects deemed to be 'of national significance' could, and would, be made.

As noted in Chapter 1, the implications of the process shift brought about by the Phase I reforms are the focus of the research carried out for this thesis. To understand these reforms it is important to understand the wider context in which the RMA was developed. This chapter will provide an overview of resource management decision-making in New Zealand before the RMLR process and the changes this process brought about. It will focus in more detail on two aspects of the resource management framework: where decisions are made and who makes them; and how and why public participation is provided for in decision-making for resource management.

2.2 Context of Resource Management Law Reform

Prior to the RMA being passed, it is generally acknowledged that the resource management and planning regime in New Zealand was a "hotch-potch" (Birdsong, 2002, p. 8; Palmer, 1991b, p. 4), the complex and uncoordinated product of over fifty

acts and twenty regulations which did not all follow a consistent approach to the processes they set down (Birdsong, 2002; Memon, 1993; Memon & Perkins, 2000; Palmer, 1991b). For example, the "Directions for Change" RMLR discussion paper identified that there were "very different provisions for public participation, ranging from some that allow no public involvement (e.g. Clean Air Act) to others that enable a more open process (e.g. Water and Soil Conservation Act)" (Core Group on Resource Management Law Reform & Resource Management Law Reform (project), 1988, p. 24). These statutes were administered by government departments and ministries with responsibilities ranging from energy to tourism, each with its own compartmentalised areas of interest. In addition the Town and Country Planning Act 1977, administered by local government, provided for activity-based district planning through the zoning of land for particular types of uses which were deemed to be compatible. Within this framework for resource management there was "little, if any, coordinated planning or analysis of the environmental impacts of their activities" (Birdsong, 2002, p. 7). This situation reflected the ad hoc development of legislation to respond to issues as they arose over many decades.

The underlying philosophy of successive governments was active involvement in and promotion of economic development through the exploitation of natural resources. While this was not unique to New Zealand, it went hand in hand with the relatively recent colonisation of this country by Europeans and the speed of its change, from sparsely settled and predominantly forested to an urban society within a highly modified environment, in little more than a century. As a result there was a lack of separation of responsibility for commercial development of natural resources and their conservation (Birdsong, 2002; Furuseth & Cocklin, 1995; Memon, 1993; Memon & Perkins, 2000). The Ministry of Works and Development, as described by Palmer, epitomised this conflict of interest:

> It had been a prime mover over the years in carrying out construction for the government. It was expert in planning and building dams for the generation of hydro-electricity. It was old and big and good at defending its bureaucratic territory. It was often involved in both building big projects and providing advice and carrying out regulatory functions in relation to the construction industry. Serious internal conflicts of interest had grown up owing to the range of functions performed by the Ministry (1991b, p. 4).

The framework was unpopular with developers and environmental groups alike. The process for obtaining consent for the private sector was complex, uncertain and lengthy. Multiple consents were often required, from different central and local government bodies. Memon (1993) states that

> Development interest groups complained about problems arising from the bureaucratic hurdles they encountered when seeking multiple consents from several different central and local agencies. They complained of an inflexibility of planning schemes, too liberal public participation provisions in the decision-making process, and the delaying tactics employed by some community groups. Planning was perceived by many developers as unwarranted intervention in the market place. But there were also environmental organisations and Maori [sic] people who were critical of the inadequate recognition of environmental and Maori [sic] values in relation to economic considerations; of adversarial decision-making procedures; unaffordable hearing costs; lack of access to information; and the excessive discretionary powers accorded to central government bureaucrats and local councils (Memon, 1993, p. 87; see also Palmer, 1989; 1990).

In contrast, central government "absolved itself from such legislative constraints" (Memon, 1993, p. 87) as the Town and Country Planning Act. The 1977 version of this Act was the first to require government to obtain consent for works, unless it considered that it was in the national interest to proceed without delay (Boyle, 1986). Central government agencies instead used the *Environmental Protection and Enhancement Procedures*, which set out guidelines for environmental impact reporting for projects undertaken or funded by government departments. Initially established by the Commissioner for the Environment in 1973 to provide a framework for the preparation of environmental impact reports, these were "conceived as a substitute for the inadequate planning procedures relating to central government projects, [but] were only marginally successful in containing undesirable impacts on the environment" (Memon, 1993, p. 87). The procedures were revised frequently until 1987, and the overall tone of the final version was more enabling than the original; for example, no justification of public need was required and the requirement to consider alternative options had been removed (Commission for the Environment, 1973; Ministry for the Environment, 1987).

2.2.1 National Development Act 1979

Despite the general lack of legislative constraints on development, in 1979 a National Government passed the National Development Act to facilitate that Government's 'think big' programme of development projects (Boyle, 1986; Palmer, 1990). The purpose of the Act set out in its long title was

> to provide for the prompt consideration of proposed works of national importance by the direct referral of the proposals to the Planning Tribunal for an inquiry and report and by providing for such works to receive the necessary consents.

Section 3[4] allowed any person to apply to the Minister to have the provisions of the Act applied to any government or private work. It was then up to the Governor-General in Council[5] to decide whether the work was "a major work that is likely to be in the national interest" and whether the work was "essential" for "The orderly production, development, or utilisation" of resources, the development of self-sufficiency in energy, "The major expansion of exports or of import substitution; or …The development of significant opportunities for employment", and whether it was "essential that a decision be made promptly as to whether or not the consents sought should be granted" (s 3).

If it was decided that the application met the criteria, the Minister of National Development then referred the proposal to the Planning Tribunal to conduct an inquiry, write a report and make a recommendation. Section 7(7) required that the Tribunal give processes under the Act priority over anything else before it. Provisions setting out the process of the inquiry were not dissimilar to those in the RMA; inquiries had to be held in public (s 7(6)), at the nearest convenient place to the location of the proposed work (s 7(8)). Section 8 outlined who was entitled to be heard; these included the applicant, the Minister of Works and Development, the relevant local authority, the Commissioner for the Environment, any body or person affected by the proposed work or "representing some relevant aspect of the public interest". Timeframes were prescribed, with the notable exception of the time that could be taken for the inquiry. The Tribunal's recommendation was submitted to the Minister of National Development and publically notified, and the Governor-General in Council could declare the work to be of national importance and grant the necessary consents

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[4] All legislative references in this section are to the National Development Act 1979.

[5] i.e., "the Governor-General acting by and with the advice and consent of the Executive Council" (Acts Interpretation Act 1924, s 4), Executive Council consisting of Cabinet Ministers and the Governor General.

soon after (s. 11). Decisions and procedural matters could only be reviewed by the Court of Appeal, within a very limited timeframe (Boyle, 1986; Taylor, 1995). The result was a process that "increased scope for political and administrative discretion and created further uncertainty for the participants" (Memon, 1993, p. 88).

Boyle, in his Masters' research on the NDA, (1986) demonstrates that the argument that the legislation was needed to avoid costly planning delays for government 'think big' projects was spurious. In examining two developments often used by the National Government as examples of projects delayed through planning processes, he found that although a consolidation of the legislative framework for planning was desirable, "most of the delays in the Clyde dam project were caused by the government itself and were not the direct result of protests" (p. 85). In the case of the Karioi pulpmill, he found that the time taken between Winstone first declaring an interest in building a mill to construction beginning was probably less than it would have taken under the NDA. Boyle claims that the 1982 decision to proceed with the Motunui synthetic petrol plant was the most important decision made by the 1981-84 National Government, "Yet because of the ND Act there was no public input into this decision" (p. 2). The legislation had created "a process of consultation between government and private interests through which major decisions were made before there was any opportunity for public input" (Boyle, 1986, pp. 81-82).

This relatively small piece of legislation (only nineteen sections) was used only twice and was repealed in 1986, but despite its brevity and its short life its impact goes beyond the provisions themselves. Unpopular at the time (Memon, 1993), it still raises controversy and is referred to consistently by politicians and commentators (Benson-Pope, 2004; Chauvel, 2011; James, 2003; Jones, 2006; Matheson, 2013; Royal Forest and Bird Protection Society of New Zealand, 2004; Sage, 2013, for example) whenever a policy shift towards direct referral or alternative requirements for projects of national significance is initiated, largely because of the extensive powers it gave central government to make decisions on major proposals for development without reference to local communities or other interested parties.

2.3 Resource Management Law Reform

The RMLR programme was initiated and largely carried out by the Fourth Labour Government from 1988 (Palmer, 1990, 1991b), although the reform process had really begun in 1985 with structural changes designed to separate, clearly define and remove

conflicts of interest between the conservation and commercial functions of central government (Palmer, 1989). This aspect of the reform was closely tied to much wider and radical reforms initiated by the Fourth Labour Government between 1984 and 1990, including reform of local government (Holland & Boston, 1990).

The RMLR process was led by Geoffrey Palmer, a senior member of the Fourth Labour Government[6]. Its purpose was "to put the laws governing land, water, air and minerals into one package with a consistent and coherent set of principles running through the totality" (Palmer, 1990, p. 91). It was also firmly and fundamentally linked to the growing understanding of the concept of sustainable development (Palmer, 1989, 1991b), a key theme of the 1987 Brundtland Report (World Commission on Environment & Development, 1987).

2.3.1 Sustainable development and participation

The Brundtland report, prepared by the independent World Commission on Environment and Development (WCED), defined sustainable development as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (WCED, 1987, p. 43) and examined the inter-relationship of economic, environmental and social factors in decision-making. It called for recognition and action in favour of 'the common interest' as a fundamental aspect of sustainable development; however, it acknowledged that

> The law alone cannot enforce the common interest. It principally needs community knowledge and support, which entails greater public participation in decisions that affect the environment. This is best secured by decentralizing the management of resources upon which local communities depend, and giving these communities an effective say over the use of these resources (WCED, 1987, p. 63).

WCED set out that one of the underlying goals for national and international development action was "a political system that secures effective citizen participation in decision making" (WCED, 1987, p. 65).

[6] Deputy Prime Minister 1984 until becoming Prime Minister for in August 1989, and Minister for the Environment 1987-1990 (McLean, 2010).

Following on from this work was the 1992 United Nations Conference on Environment and Development (UNCED) in Rio. This conference set out 27 principles for sustainable development in the document known as the 'Rio Declaration' (United Nations, 1992), with an associated programme of actions and objectives called 'Agenda 21' (United Nations, 1993). One of these programme areas was "Integrating environment and development in decision-making" (United Nations, 1993, p. 65) and had as its overarching objective "to improve or restructure the decision-making process so that consideration of socio-economic and environmental issues is fully integrated and *a broader range of public participation assured*" (emphasis added; United Nations, 1993, p. 65). Under this was the more specific objective "To develop or improve mechanisms to facilitate the involvement of concerned individuals, groups and organizations in decision-making at all levels" (United Nations, 1993, p. 66). To achieve these objectives, governments were to ensure "access by the public to relevant information, facilitating the reception of public views and allowing for effective participation" (United Nations, 1993, p. 66).

The Rio Declaration also reinforced the need for public participation in environmental decision-making through Principle 10:

> Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided (United Nations, 1992, n.p.).

Associated with this principle was Objective 10.5(d): of Agenda 21 "To create mechanisms to facilitate the active involvement and participation of all concerned, *particularly communities and people at the local level*, in decision-making on land use and management…" (emphasis added; United Nations, 1993, p. 85).

2.4 RMA 1991 prior to 1 October 2009

The outcome of RMLR was the RMA, passed by the National Government elected in 1990 (Palmer, 1991b). There is no doubt that the RMA reflects the aspirations for

public participation in environmental decision-making processes embodied in international principles for sustainable development, and that this is by design. The explanatory note of the Resource Management Bill stated "Another main feature of the reform is that individuals and the community may have a greater and more direct say in resource management" (Resource Management Bill 1990, p. iii). During the second reading of the Bill, Palmer noted that "The Bill encourages decisions on resource use to be made at the level of community that is most appropriate" (Palmer, 1991a, p. 3951).

The move towards more public participation in government and decision-making in New Zealand was not limited to the RMLR process. Palmer, in his 1987 book on New Zealand's constitution and government, noted that

> Greater opportunity for public participation in all important decisions on a continuing basis will improve the decisions and be more democratic. That has been the direction in which New Zealand has been travelling in recent years – more information about decisions is made available and more public participation in those decisions encouraged (1987, p. 15)

Miller argued that this approach has endured:

> The RMA cannot be faulted on the opportunities that it provides for the public to become involved in the act's processes… In New Zealand the opportunity to be consulted about anything and everything has… been provided for in almost every piece of legislation that has been passed in the last twenty years. The writers of legislation now appear to see it as mandatory, which has in turn created a strong public expectation that it will be provided for (2011, p. 193).

The RMA includes opportunities for participation during regional and district plan-making (the setting of objectives and the development of policies, and regulatory and non-regulatory methods of achieving them (Part 5 and Schedule 1) and in relation to environmental decision-making (the most common being processes for resource consents (Part 6)). These opportunities are principally through the frameworks the RMA sets out for making and hearing submissions in relation to plan-making and resource consents. According to Birdsong, the RMA also provided the means for "virtually every important mechanism for environmental management" (2002, p. 28) to be appealed to the Environment Court; this remained the case until 2009.

The fundamental principles of public participation and local decision-making have been maintained during all reforms of the RMA before 2009, although the extent of access to the Environment Court has changed over time as the result of amendments. In practice, however, it should be noted that the vast majority of resource consent decisions – consistently more than 90 percent (Ministry for the Environment, 2001/2002-) – are decided by the consent authority with very limited or no public participation in the process.

The importance of the principle of public participation in resource management decision-making has been reiterated during amendments. For example, the commentary of the 1996 amendment bill included a whole section on the importance of public participation and stated "Public participation is crucial to effective decision-making under the RM Act" (Resource Management Amendment Bill (No. 3) 1996, p. xxvii), and the 2003 amendment bill included the objective "to improve the implementation of the principal Act with particular emphasis on reducing costs and delays (whilst ensuring environmental opportunities are not compromised and retaining opportunities for public participation)" (Resource Management Amendment Bill (No. 2) 2003, p. [1]). Parliamentary debates for proposed amendments to the Act also acknowledged the importance of participation or use perceived challenges to the provisions as a debating point. During the second reading of the Resource Management Amendment Bill 1993, Storey[7] stated that "The Resource Management Act, with its processes for decision-making, involves far greater public and local authority involvement than any other statute" (1993, p. 15919). In 2003, during the first reading of the Resource Management Amendment Bill (No. 2), Hobbs[8] criticised an earlier amendment introduced by the Opposition which proposed contestable consent processing and compulsory use of hearing panels (i.e., independent commissioners rather than hearing committees made up of elected members), claiming that those

> changes would have compromised environmental outcomes and reduced opportunities for public opportunities for public participation. They would have reduced the role of local government, which is counter to a key principle of the Act that local government is best placed to make the majority of decisions on environmental and resource management matters (p. 4294).

[7] Minister for the Environment, National Government.
[8] Minister for the Environment, Labour Government.

The continued inclusion of public participation and local decision-making approaches has not been universally supported, however. The perception prior to the RMA's introduction was that environmental decision-making processes inhibited development through long-winded procedures that encourage 'vexatious and frivolous' submissions and add significant costs for both resource consent and plan-change applications. This perception remains and is often cited a reason for reforming the RMA by politicians and commentators across the political spectrum (Adams, 2013a; Brash, 2011; Chauvel, 2010; Oram, 2013; Smith, 2007, for example). Plan-making processes have also been criticised for taking too long and failing to provide certainty. These issues are particularly raised in relation to proposals for large developments which may require decisions at both a regional and district level, and which attract participants with strong opinions about the potential benefits or adverse effects. During the Parliamentary debate following the introduction of the Resource Management and Electricity Legislation Amendment Bill in 2004, Eckhoff[9] claimed that

> The Resource Management Act has become known by virtually all resource users in this country as probably one of the most obnoxious Act [sic] that New Zealand has. …The vexatious objections will still occur on a constant basis… The Resource Management Act has ensured that no significant project has taken place in this country since it was passed back in 1991 (p. 17973).

2.5 Proposals of national significance

The RMA has always included provisions[10] to allow the Minister for the Environment to decide that a proposal is of national significance, and for any applications relating to that proposal be "determined by the Minister on the basis of the recommendations of an independent Board of Inquiry" (Taylor, 1995, pp. 407-408). The board was to be selected to "(after consultation with the relevant local authority), fairly represent any national, regional, territorial, and iwi interests in the application concerned" (s 146). While there was a list of criteria that the Minister could take into account when making the decision (including public concern or interest regarding environmental effects, significant use of natural or physical resources and effects beyond one region), he or she could consider "any relevant factor" (s 140(2)). This gives the Minister a broad power, referred to as a 'call-in', to bypass local decision-making processes. Any

[9] Member of Parliament for the ACT Party.
[10] Sections 140-149.

suggestion that this would allow NDA-style approvals were firmly countered in the Bill's explanatory note:

> The Bill provides for the Minister of the Environment to initiate a call-in process in restricted situations. Call-in allows central government to conduct a national inquiry, and make a decision about the proposal. *However, the Bill provides that such decisions would still be subject to standard appeal procedures* (emphasis added; Resource Management Bill 1990, p. viii).

It was envisaged that these provisions would be used only rarely, as noted by then Minister for the Environment, Simon Upton:

> *Because of its political nature*, the Minister's power to call in applications of national significance will always be used sparingly.
>
> *Call-in is not a fast-track option*. It is specifically to deal with applications that raise matters of national significance and for which it is more appropriate that central rather than local government determine (emphasis added; 1991, p. 174).

Miller noted that "call-ins, which allow the government to remove an application dealing with an issue in the national interest from local consideration… were another tool that has been almost completely unused from 1991 to 2008" (2011, p. 170).

The 2005 amendment had as one of its key measures "providing new mechanisms for non-local decision-making that build on the existing ministerial call-in process" (Resource Management and Electricity Legislation Amendment Bill 2004, p. 2). The amendment provided a second option to the Minister, of referring proposals of national significance to the Environment Court. It also allowed local authorities and applicants to request that the Minister call a proposal in (s 141A). These measures were seen by the Labour Government as "achieving the right balance between national and local interests. The Government recognises that local authorities are increasingly being asked to consider projects that raise issues of national significance" (Benson-Pope, 2005, p. 22333). The National Party considered that the Bill should include the right for any applicant to request direct referral to the Environment Court, a measure it had been proposing since the late 1990s. The Green Party, on the other hand, saw it as evidence that

> Labour…started off supporting the environment and people, but it has given into pressure and has been panicked by National's relentless demands for more "think big" projects, more big roads, more power stations, and more power lines. The Labour Government has amended that Act to give itself the power to override communities and to impose big infrastructure projects on them (Fitzsimons, 2005, p. 22347).

Between 1991 and 1 October 2009, there were only six call-ins referred to Boards of Inquiry or the Environment Court. All of them were called in after 2005 (Ministry for the Environment, 2010).

2.6 The 2009 Amendment – Phase I Reforms

In 2008 a new National Government was elected, promising to "introduce our Resource Management reform bill in the first 100 days of a new National Government and they [sic] will be made law within six months" (Smith, 2007, n.p.). The extent of the reforms proposed by the new Government were too extensive to be considered within this short timeframe, so they were split. The provisions of the initial bill, the Resource Management (Simplifying and Streamlining) Amendment Act passed in 2009, are often referred to as the 'Phase I reforms'.

This 2009 amendment included significant changes to the provisions around proposals of national significance and the institutional arrangements for making decisions on these proposals, in particular the establishment of an EPA, initially within the Ministry for the Environment, to manage national consenting processes decided by a board of inquiry or the Environment Court (Part 6AA). The EPA has no decision-making powers. It's role in these processes is:

- ensuring the application meets the requirements of the RMA) for lodgement
- advising the Minister if the EPA consider [sic] the proposal to be nationally significant
- notifying the proposal by placing public notices in local and national newspapers
- providing administration for the board of inquiry
- receiving and processing submissions

- providing information to everyone involved, including hearing procedures and important dates and deadlines.

EPA staff will also attend the hearing, and act as a liaison between the board and the applicant and submitters (EPA, 2013, p. 3).

For applications made directly to the EPA, it also has the power to request further information from the applicant and to prepare or commission the preparation of a report on any issue (s149(2)).

This was followed by the Environmental Protection Authority Act 2011 which established the EPA as a separate Crown entity and moved responsibility for hazardous substances and new organisms, and the administration of the emissions trading scheme from other organisations.

The Minister for the Environment's Technical Advisory Group (TAG) made the following comments on the rationale for these amendments, citing "unreasonable delays" in the processing of consents for significant projects of national importance (2009, p. 35). The TAG went on to say that

> With the Government's commitment to increased infrastructure spending, some of these [highway projects calculated as having a high benefit-cost ratio] will very likely gain a greater priority than hitherto. It would be unfortunate if the country were to be deprived of the clear economic benefit of that completion through delays in the approval process. …Despite the availability of the call-in procedure, it has been used only on a handful of occasions in the 18 year history of the Act. We are unaware as to whether this reflected a political reluctance or the shortcomings in the Act's procedures. Nevertheless, we understand that the Government is determined to make greater use of call-ins, and we suggest a number of enhancements to the Act as it presently stands (p. 35).

One of the 'enhancements' that the 2009 amendment introduced to the call-in provisions was a rigid set of timeframes for the various phases of the process and a requirement that the final report of a board of inquiry be produced within nine months of the public notification of the Minister's direction (s 149R); this can only be extended by the Minister (s 149S). An application referred to the Environment Court, however, has

to be heard and determined “as soon as practicable” after lodgement (s 272). The decisions on called-in proposals cannot be appealed except on points of law.

There are still clear provisions for public participation in applications and requests administered by the EPA; submissions and further submissions processes are set out in Sections 149E and 149F, with submissions being open to “any person” (s 149E(1)). The EPA assists participation by appointing a ‘friend of submitters’ (EPA, 2010b), an independent planner to provide advice and assistance to submitters on the process.

The 2009 amendment also introduced a process for any applicant for resource consent to request that their application be referred directly to the Environment Court (s 87C – 87I), or to make an application for a resource consent, notice of requirement or heritage order, or a plan change or preparation request directly to the EPA (s 145) for processing by a board of inquiry or the Environment Court. Both of these processes have the potential to by-pass decision-making at local level, although the EPA can recommend that the Minister refer direct applications and requests back to the local authority (s 146 and 147). A local authority was able to refuse the request; however, the Resource Management Amendment Act 2013 has changed this provision to require that the proposal be referred if it exceeds an investment threshold set by regulation unless ‘exceptional circumstances’ apply (s 87E).

Since the amendments to the RMA came into effect on 1 October 2009 there have been fifteen applications and requests made to the EPA. Thirteen have been referred to boards of inquiry to decide (with final reports having been prepared for five) and one to the Environment Court, and one proposal was referred back to the local authority to be processed.

2.7 Phase II reform

Reform of environmental legislation in New Zealand continues to be a priority under the National-led Government, as it undertakes further RMA Phase II reforms. The Resource Management Amendment Act 2013 will introduce a six-month time limit for local authorities to process notified resource consent applications (with some flexibility to this timeframe permitted at the discretion of the applicant) and restricts their ability to decline a request for an application to be referred to the Environment Court for processing (s87E). Further wide-ranging proposals were released for discussion in February 2013 (Ministry for the Environment, 2013b) and refined in August 2013

(Ministry for the Environment, 2013c). These include a requirement for all districts (or groups of districts) to create a resource management plan which integrates relevant regional plan provisions, using a national template that will be developed by central government and will include some standardised content. The most relevant of the proposals, however, is that

> The content of submissions must be limited to [the particular effects that mean the application is being notified] and councils will be required to strike out submissions that are irrelevant to those matters *or have no evidential basis* (emphasis added; p. 19).

The reference to evidence indicates a significant shift in the understanding of expert and non-expert submitter participation as it suggests an increase in formal expertise will be required for those wishing to participate in resource consent proceedings.

2.8 Conclusion

This chapter has outlined the background to, and current statutory framework for, environmental decision-making processes, focusing on the importance placed on public participation throughout the RMA when it was developed. Drawing on parliamentary debates and acknowledging the influence of international developments such as Agenda 21 on the RMA, it is clear that public participation has been provided for consistently in New Zealand's resource management regime since the RMA was passed in 1991. Amendments to this Act since 2009, however, have made some significant changes that represent a shift in policy direction and potentially may have the effect of curtailing public participation in respect of proposals of national significance.

The next chapter will discuss other research and published literature relating to public participation in planning processes that has a bearing on this project and the theories which underpin it, focusing on frameworks of public participation and barriers to participation in these processes. The EPA's structure and functions, and published material that addresses the board of inquiry processes it has managed, will be reviewed.

3 Literature Review

3.1 Introduction

As discussed in Chapter 2, the purpose of this research is to examine non-expert participation in resource management decision-making processes in New Zealand. It focuses specifically on the impacts of the 'simplified and streamlined' national consenting process managed by the EPA on that participation. This chapter provides an overview of the available literature that has informed and influenced this research. It critically reviews the literature on the EPA and, provides a brief overview of the literature on aspects of public participation in resource management decision-making in New Zealand.

3.2 Environmental Protection Authority

New Zealand's EPA was established in October 2009 and to date very little research has been published on it, or the board of inquiry decision-making processes it manages. The initial reform of resource management legislation undertaken by the National-led Government following its election in 2008 was completed very quickly. The 'Phase I' reforms led to the introduction of the Resource Management Act (Simplifying and Streamlining) Bill by that Government within 100 days of taking office (Smith, 2009). The Minister's independent Technical Advisory Group (TAG), brought together in December 2008, in making its initial report in February 2009 commented that "The TAG has been very conscious of the need to complete its work within this tight timeframe… The short time frame [sic] for its work meant that some issues could not be fully considered" (TAG, p. 5 & 6). Given the speed of the reform process, the relatively short time since it took place and the limited number of applications that have been processed using the new provisions, the limited amount of published research available focuses almost exclusively on the EPA's structural arrangements.

Peart (2009) examined various models for environmental protection agencies as manifested in six existing national or state agencies from areas with broadly comparable populations and legal systems to New Zealand: Western Australia; Victoria; Ireland; Scotland; Sweden and Denmark. The purpose of the research was to consider "given that an EPA is to be created, how can it best be designed to maximise benefits for the environment" (2009, p. 1). Having summarised the institutional

structure and functions of the agencies in the selected jurisdictions, three options for a New Zealand EPA were identified: ‘minimalist EPA’, ‘focused science-based EPA’ and ‘EPA as national environmental manager’. However, none of these options were supported. Instead the focus was on considering the roles and functions of an environmental protection agency.

Peart (2010), in an article following on from the 2009 publication, after the Government had announced its proposals for the EPA, included a critical evaluation of the EPA proposal. In particular, the article examined whether the EPA’s structure would meet the Minister’s stated objectives of being “the arm’s length national regulator of environmental controls doing the day-to-day consenting, administrative and enforcement functions” (Smith, 2010a, n.p.) and national regulator of the New Zealand environment (Peart, 2010, p. 14). Peart also compared in detail specific elements of the proposed structure with those environmental protection agencies examined in her 2009 paper, including level of independence from political interference, structure, Māori involvement, functions and resources. She noted that the “The EPA has a narrowly-defined role which focuses on processing, but not deciding, matters of national significance called in under the [RMA]…” (2010, p. 13), and does not include enforcement or providing technical support to local authorities (p. 18).

Peart’s focus in both works was firmly on what will be the optimal institutional arrangements for the proposed EPA in terms of strengthening environmental management, including a particular focus on landscape protection and coastal and marine management (2009). Neither publication discussed boards of inquiry or non-expert participation, although Peart criticised the arrangements proposed by Government for Māori involvement as “minimalist” and “out of step with other recent developments in environmental law which are moving towards a more ambitious co-governance model” (2010, p. 16).

Peart stated that the EPA, as an independent Crown entity, will not be independent of ministerial influence as claimed by the Minister for the Environment (Smith, 2010a, n.p.), as the Minister directly appoints the EPA board members and can direct them to implement Government policy (Peart, 2010, p. 16). Overall, she concluded that the proposed “EPA should make a difference, but in a limited way” (2010, p. 18) to the effectiveness of New Zealand’s environmental management regime and environmental outcomes.

Paine's 2010 dissertation compared the proposed EPA with the Victorian and Irish EPAs and was also predominantly focused on its proposed structure and functions. She was critical of the limited functions the New Zealand EPA would have and suggested a range of others that could be developed over time, including 'state of the environment' reporting, increased support to local authorities in plan-making, and enforcement and monitoring of consent for proposals of national significance. Paine also identified the potential for political interference in the EPA.

Paine concluded that the proposed New Zealand EPA will provide minimal benefit to the environment "given that it is simply the merger of existing functions, thus not fixing the weaknesses of the environmental management system" (p. 64) and that

> The pressure on EPA NZ to assist in fast tracking major infrastructure also means that it is highly likely that in the future it will be seen more as a government tool, rather than an "environmental protection" agency, as its name suggests (p. 69).

In their unpublished group study[11] assessing the legislative framework and institutional arrangements associated with the EPA, Abes, Boyd, Bull, Coffey, Christie, Lompoliu & Shang (2011) drew on Peart's analysis in identifying the five common characteristics of environmental protection agencies internationally. These were:

- including a mandate to protect the environment;
- having policy-making functions;
- undertaking enforcement;
- having a Board appointed through discussion between governmental and independent parties; and
- having a budget commensurate with their functions (Abes et al., 2011, p. 64).

They concluded that New Zealand's EPA fully satisfies only one of these criteria (having sufficient budget), and will have only limited policy-making and enforcement functions. They particularly focused on the lack of explicit mandate for environmental

[11] This study was undertaken by second year Masters of Environmental Policy students at Lincoln University. A summary was published in the Lincoln Planning Review (Boyd, 2012).

protection and the power of the Minister for the Environment to appoint the Board alone (Abes et al., 2011, pp. 64-66). The former,

> …combined with an emphasis on efficiency, may work to sway future interpretation of sustainable management towards economic objectives. The wording of the Act, therefore, is positioned to reinforce claims that the EPA will fast track development (Abes et al., 2011, p. 48).

Some of Abes et al.'s more peripheral findings associated with the EPA's functions under the RMA are of particular relevance. They stated that the greatest threat to the EPA achieving its purpose of contributing "to the effective, efficient, and transparent management of New Zealand's environment…" (s 12(a) Environmental Protection Authority Act, 2011) was:

> That the EPA is likely to be seen as a mechanism to fast track development.... checks and balances will need to be put in place to *ensure that they do not simply operate as a 'rubber stamping' authority*. …This threat is closely associated with that related to the pressure which reduced time frames [sic] will put on the Boards of Inquiry… *undermining the effectiveness of decisions in the name of efficiency*.
>
> …[R]educed timeframes will impact on the ability of the general public to get involved in the decision-making process. In fact, *the general public may become increasingly removed from the process* thereby limiting the amount of information available to the Boards of Inquiry when making their recommendations. Such outcomes could therefore be said to limit the transparency of the EPA process… (emphasis added; Abes et al., 2011, p. 69).

Abes et al. recommended that the timeframes for public submissions and decision-making for proposals of national significance should be lengthened "to ensure the process is more transparent and 'user friendly'" (2011, p. 72). This concern with the impact on participation of having to reach a decision within nine months recurs through much of the available literature on the EPA managed decision-making processes discussed below.

Two conference papers were presented at a session focused on the EPA at the New Zealand Planning Institute's (NZPI) March 2011 conference[12]. Although these were quite brief, they are of particular relevance as they examine the first proposals of national significance to be decided entirely through the EPA managed processes under the amended legislation, and consider how the national consenting process has impacted on participation by non-expert submitters.

One paper (Eccles, Gardner, & Clafferty, 2011, consultants and senior staff at the EPA) examined the consent process for the Tauhara II geothermal development project at Taupo; at the time of the conference this was the only proposal of national significance to have been completely decided by a board of inquiry through a national consenting process managed by the EPA. The project, the key steps in its processing and the timing of these in order to achieve the nine month deadline were described.

The authors noted the steps taken by the EPA to ensure that submitters were informed during the process, given the large volume of information. These included public meetings, the appointment of a "Friend of the Submitter" (an independent, local planning consultant appointed by the EPA to support lay submitters' understanding of the process and how to make submission) and the use of email, a webpage, and free phone service to provide information and enable enquiries. Electronic service of documents was encouraged and the authors stated that 80 percent of all the parties involved in the process received documents through this method.

The Board of Inquiry for the Tauhara II proposal also directed that a number of measures be used to facilitate submitters' on-going participation in the process, including one-on-one meetings, small and large group sessions, and hui. The paper reported that "positive feedback was received from submitters over the provision of information and assistance throughout the process" (Eccles et al., 2011, n.p.).

There were some additional points made about the role of the Friend of Submitters and its value during the presentation of this paper and the discussion that followed. Eccles noted that the role included assisting submitters on how to resource themselves. It was also suggested that assistance to non-expert submitters could be extended into the Hearing process, by appointing a 'Friend of the Court' (P. Tucker, notes, March 30, 2011).

[12] The following discussion also draws on my detailed notes, taken at this conference session.

While this paper provides an interesting and valuable insight into public participation in the Tauhara II consenting process, its value is limited by several factors. Firstly, it was written to support a brief conference presentation and was, arguably, intended to demonstrate that the EPA has been successful in managing the process for a proposal of national significance. Consequently, there was little detailed evidence provided to support the claims relating to submitters' satisfaction with the EPA's provision of information and assistance throughout the process, or any indication that this was assessed formally rather than anecdotally. It is also important to note that the information provided in relation to non-expert submitters appears to encompass iwi and hapū submitters, whose concerns with both proposals and process are beyond the scope of this research, for the reasons set out below in section 4.7.

In another paper, Cronwright, Linzey & Vince (2011) used the Waterview Connection project as the basis for considering some key processes and outcomes of resource management decision-making processes, in the context of Government's objectives for the new national consenting processes. It was presented by two resource management consultants from Beca Carter Hollings & Ferner Ltd, and co-authored with a representative of the applicant (their client), the New Zealand Transport Agency (NZTA).

This paper also briefly outlined the new EPA managed processes, with an emphasis on the national consenting process and how it compares to the 'conventional' consenting process. It includes an effective figure to show the timeline for the Waterview Connection proposal to March 2011, to support the discussion about the impact of a fast-moving process on matters including public participation. The authors noted the importance of technology in addressing "the logistical challenges in terms of meeting the requirements for serving information" (Cronwright et al., 2011, n.p.) on participants, including sending material to submitters on compact disc, uploading documents onto a dedicated website, and making large documents available in both PDF and Ebook format so downloading them or reading them online was more manageable.

In contrast with the paper by Eccles et al., this paper included a more substantial discussion of the opportunities and challenges for public participation in the context of the speed of the process. However, this paper was again based on the observations of the authors rather than being supported by robust evidence or research. The authors also outlined which aspects of the process they considered should be the focus of improvements to the national consenting process through the Phase II RMA reforms.

One of these aspects was “How the communication on a Project, particularly following lodgement can be undertaken in a way that enables communities and submitters to remain engaged in the process and the Project itself” (Cronwright et al., 2011, n.p.).

Cronwright et al. also discussed the question of who the decision-makers are for proposals of national significance and how this has shifted under national consenting processes. Their discussion briefly considered the advantages and disadvantages of environmental decision-making by a local or requiring authority and a board of inquiry, including questions of perceptions of independence in decision-making as opposed to more collaborative processes. In particular, they noted that, while a decision referred to a board of inquiry or the Environment Court will be seen to be a

> fair and unbiased decision… there is no guarantee that any discussions or agreements reached between the applicant, submitters and/or the local authority who will ultimately administer the conditions, would necessarily carry through to the decision report (Cronwright et al., 2011, n.p.).

That is, regardless of the outcomes of consultation between all the parties involved in the proposal prior to or during the hearing process, the final decision rests with the board of inquiry. The same is true of decisions made by hearing panels appointed for conventional resource consent decision-making processes; participation does not guarantee influence over the outcome of the process, although there is a perception that where these panels include elected members they may be politicised (see *A consent process free of politics*, 2007, n.p., for example).

Overall Cronwright et al. provided a useful, although brief, assessment of the impact of the EPA on environmental decision-making, including community participation in the process, through a single case study. The authors raised a number of matters about the drawbacks for community participation in board of inquiry processes, in particular those arising from the lack of time, the volume of information and the limited opportunities for the applicant to engage with submitters once the application has been lodged. As such, this paper contributes to the body of literature on barriers to participation discussed below at section 3.3.2.

Linzey, Masefield & Hopkins, consultants for NZTA, gave a presentation at the 2013 NZPI conference on collaborative approaches to consultation for major infrastructure projects, also using Waterview Connection as a case study. No written paper was

published. The only written material available is the slide show used during the session, from which limited points of relevance can be drawn. One of the slides set out NZTA's "Principles for Engagement":

> The community which will be affected by the project
>
> - Have the right to be involved
> - Have the opportunity to say how they want to be involved
> - Have opportunities to input into/influence the decisions made
> - Have access to the information they need
> - See how their input has influenced the project (Linzey, Masefield, & Hopkins, 2013, [slide 6]).

A later slide noted that consenting phase was "hard on everyone", with "misperceptions of the [hearing] process" (Linzey et al., 2013, [slide 11]). There were two quotes from non-expert submitters from March 2011 regarding the difficulty they experienced in participating in the Waterview Connection Board of Inquiry process, particularly due to the volume of information and restricted timeframes (Linzey et al., 2013, [slide 12]). As with Cronwright et al. (2011), this material adds weight to the discussion of barriers to participation below (section 3.3.2).

In the 2011 biennial survey of local authorities, the Ministry for the Environment included for the first time questions on the EPA's activities relating to the RMA in the period between 1 October 2009 and 30 June 2011, and presented the data gathered[13]. The survey gathered data on:

- the number and types of applications either called in by the Minister for the Environment or lodged directly with the EPA, that had been processed to a decision within the survey period;

- appeals on those decisions;

[13] This survey began in 1995, and was conducted annually until 2001 when it then became biennial. The purpose of this survey is to assist the Minister for the Environment to monitor local government's implementation of the RMA, and to encourage development of best practice through comparison and benchmarking. It does not monitor the effectiveness of the RMA in delivering environmental outcomes but is entirely focused on the processes associated with the RMA.

- whether further information had been requested or reports commissioned;
- how many consents were declined or returned as incomplete;
- whether timeframes for processing applications were met or extended, and the time taken by the Environment Court to process decisions;
- costs incurred by the EPA charged to applicants; and
- questions around the EPA's staff numbers and best practice including pre-application, engagement with Māori, and whether staff have a set structure to follow to assess if the proposal is of national significance .

Of these, the point of most relevance to this research is that, of the two matters (Tauhara II and Waterview Connection) that were processed to a decision on time (i.e. within nine months or an agreed extension period), one was extended. However, there was no context or reason provided as to why this occurred (Ministry for the Environment, 2011, p. 88), and no conclusions can be drawn from the report regarding whether the nine month timeframe can be realistically and consistently implemented.

Some earlier editions of the two-yearly survey provided interesting insights into other matters relevant to this research[14]. The 1995 and 1996/97 surveys reported on the number of resource consent applications that were notified, and the percentage of these that attracted submissions. The 1995 survey report noted that more notified consents attracted submissions than expected, indicating third party participation in resource consent process. It qualified the usefulness of this quantitative data without supporting contextual information, stating "It does not, however, indicate the type of groups or individuals that are involved in making submissions, nor does it highlight any of their experiences or opinions" (Ministry for the Environment, 1996, p. 30).

The 1996/97 survey also sought information about the extent of "vexatious behaviour by submitters during the resource consent process" (Ministry for the Environment, 1998, p. 47). Thirty-six of the seventy-nine respondent councils indicated that this

[14] This survey began in 1995, and was conducted annually until 2001 when it became biennial. The purpose of the survey is to assist the Minister for the Environment to monitor local government's implementation of the RMA, and to encourage development of best practice through comparison and benchmarking. It does not monitor the effectiveness of the RMA in delivering environmental outcomes but is entirely focused on the processes associated with the RMA.

occurred for an average of 2.6 percent of applications. It appears that this was measured over all consent applications, not only the 5.3 percent of applications that were notified. This question has never been repeated and formal research into what constitutes vexatious behaviour by submitters in resource consent processes and its prevalence is lacking. The idea, however, that affected parties or submitters will use the approval or submission process to delay proposals is one that recurs as a rationale for limiting participation in resource consent decision-making (Ministry for the Environment, 2013b). This is surprising given that the RMA was amended in 2005 to allow consent authorities to strike out submissions they deem to be "vexatious or frivolous" (s 42A(7)).

The survey of local authorities has a number of limitations. The form of the questions has changed, making comparison over time difficult for some responses. Because local authorities have different systems for collecting and storing information relating to the functions they carry out under the RMA, each respondent has to interpret their data to answer the survey questions, which has implications for the consistency, reliability and transparency of the information provided. There are also inconsistencies in the way information is presented, which raises questions of the reliability of the analysis. For example, the 2010/2011 survey text states that eighty resource consents have been processed to a decision while a table later in the section gives the number as seventy-four (Ministry for the Environment, 2011, p. 85). The principal limitation, however, as highlighted above in relation to both the extension of the nine month processing timeframe and the number of consents attracting submissions, is the emphasis on quantitative over qualitative data, and the lack of contextual information. Together, these factors demonstrate that the survey results must be used with caution. They are, however, currently the official source of information to monitor the performance of organisations involved in implementing the RMA and are used to inform Government's resource management policy directions and legislative reforms.

This section has focused on reviewing the available literature on the establishment and functions of the EPA in New Zealand, under the RMA, since 2009 when it was formally proposed. Most of the research published about the EPA to date has examined its structural arrangements, while the material available on processes managed by the EPA and decided by a board of inquiry is limited to accounts by resource management practitioners (staff and consultants employed by the EPA or applicants) or quantitative survey data.

In contrast, public participation in planning processes in New Zealand has been legislated for since the 1967 Water and Soil Conservation Act enacted opportunities for public involvement in issues for marine areas (Salmon, 1998). Participation in resource management decision-making, both generally and in the New Zealand context, has been widely researched and extensively reviewed by many researchers; a wide-ranging analysis of this literature is not the purpose of this review. The next section, therefore, focuses on only limited aspects of participation in RMA processes that are relevant to this research.

3.3 Participation in RMA processes

As discussed in Chapter 2, participation is a key facet of sustainable development, and groups and individuals have a legislated right to participate in environmental decision-making under the RMA. Scholarly literature on participation is vast and extends through a great many subjects, from overarching considerations of the nature of democracy and the rights and duties of civil society and individuals, to participation in decision-making around specific types of resources or services such as health.

Public participation emerged as a theme in planning theory during the 1960s. Healey described the emergence during this period of new planning paradigms, which recognised that there were multiple interests in planning issues within any community[15]. These paradigms were developed in response to the increasing political and popular interest in local environmental questions, and to the resultant pressure for more active citizen involvement in planning strategies and their implementation. In both the US and Britain, this led to ideas about the procedures for citizen participation in the planning process. (Healey, 1997, p. 25).

The ideas and debates included wider considerations of the roles and relationships between different participants within political situations, in particular the struggle between those with political power and ordinary citizens who wished to access decision-making processes. Arnstein's 'ladder of citizen participation' framework (Arnstein, 1969), discussed in section 3.3.1, was developed in the context of this discussion (Healey, 1997, p. 28).

[15] Healey discusses the work of Paul Davidoff and Herbert Gans in particular (1997, p. 25).

More recent planning theory includes the 'communicative' or 'collaborative' planning paradigm (Allmendinger, 2009; Healey, 1997), which recognises the diversity of interests and expectations of different participants in planning processes, and promotes a collaborative, consensus-building approach. This paradigm has arisen out of largely theoretical debates around how to eliminate of "domination and distortion" (Allmendinger, 2009, p. 213), and proposes that the planner's role is to recognise and eradicate these aspects of planning practices to facilitate a fully participative process. Allmendinger (2009) suggests that the approach is too abstract to be achieved in practice but acknowledges the influence of the paradigm on current processes in relation to participation.

The following sections focus on specific topics within the body of literature that have particular relevance: participation frameworks, and barriers to non-expert participation in environmental decision-making processes in New Zealand under the provisions of the RMA.

3.3.1 Participation frameworks

Participation frameworks provide a useful basis for understanding the relationships between and relative roles of the participants. How participation is defined is also relevant. Zehner and Marshall (2007) argued that the terms often used to describe degrees of public involvement in planning and decision-making are not clearly understood by planners and participants alike. This lack of clarity can colour participants' understanding of their relative roles and the extent of their influence within participatory processes, leading to dissatisfaction with the processes themselves and the decisions arising from them. The language of participation and the rationale for using particular terms throughout this thesis has been discussed in depth in section 1.3; the focus of this section is to provide an overview of some influential participation frameworks.

One of the first and most influential analyses of participation was Arnstein's 'ladder of citizen participation'. Arnstein (1969) presented a linear hierarchy ('ladder') of participation beginning with non-participation (manipulation then therapy), and progressing through degrees of tokenism (informing, consultation, then placation) to degrees of citizen power (partnership, delegated power and finally, citizen control). Arnstein considered that

citizen participation is a categorical term for citizen power. It is the redistribution of power that enables the have-not citizens, presently excluded from the political and economic processes, to be deliberately included in the future (1969, p. 216).

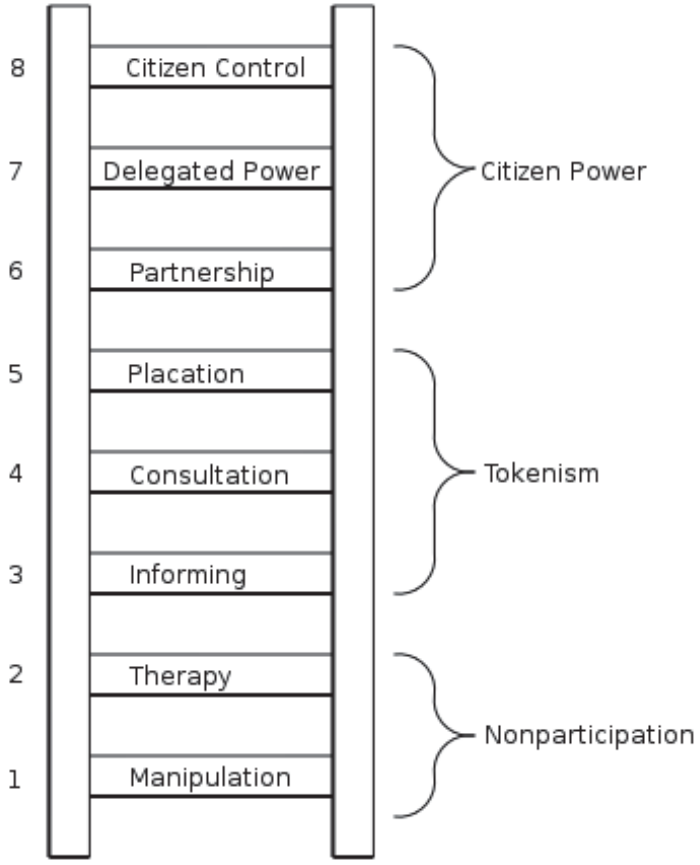


Figure 3.1 'Ladder of participation' (Source: Arnstein, 1969, p. 217)

Arnstein acknowledged at the time that the framework is limited, because the ladder is a simplification of both the different levels of participation and the groupings of powerless and powerful citizens as homogenous groups. Contemporary theorists and commentators across a range of disciplines (including, for example, Burns, Hambleton, & Hoggett, 1994; Tritter & McCallum, 2006; Zehner & Marshall, 2007) have generally recognised that there is greater subtlety between different levels of engagement, and that the context of the participation impacts on an individual's influence within the process. Burns, Hambleton and Hoggett's adapted framework[16], for example, included twelve levels, and the distance between the rungs increased as it

[16] Developed to reflect the context of local government in the United Kingdom in the 1990s.

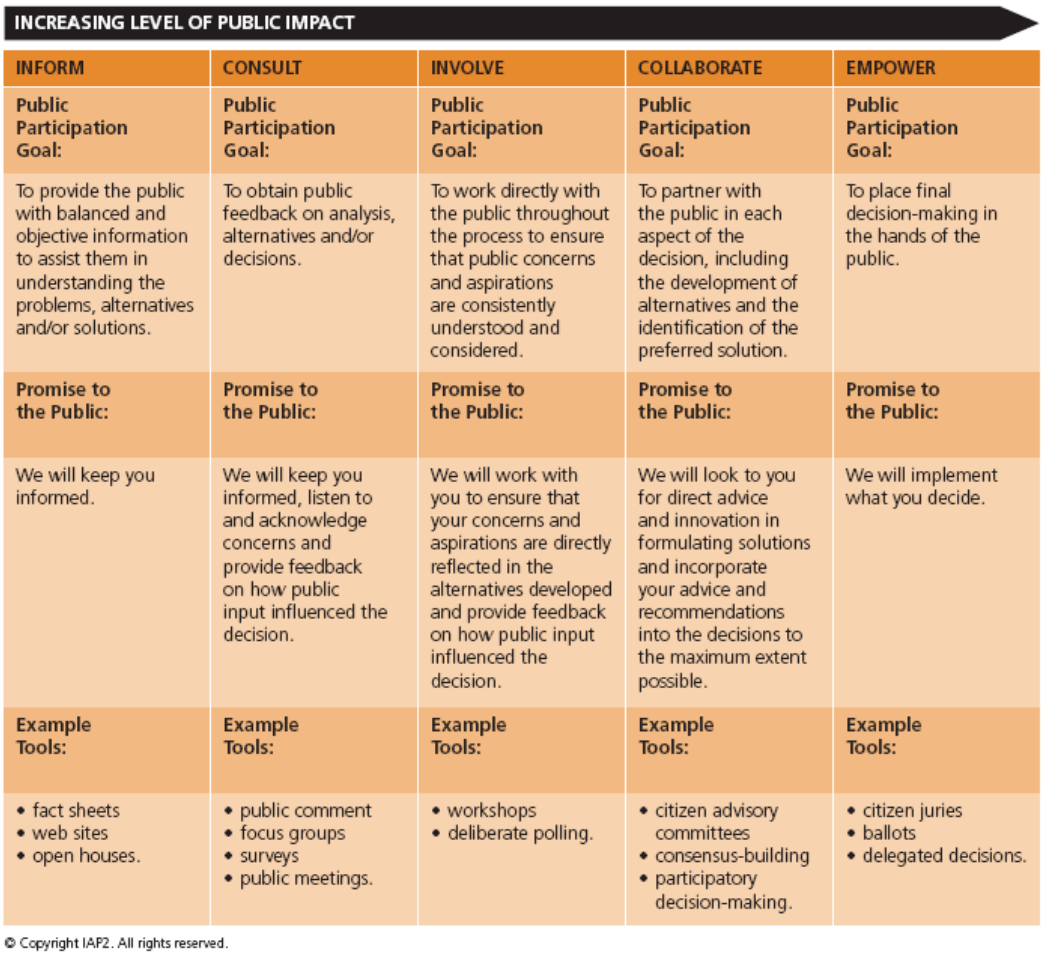
is ‘climbed’, noting that “The experience of the last twenty years shows that it is far easier to climb the lower rungs of the ladder than to scale the higher ones” (1994, p. 161). Zehner & Marshall, however, noted that planners still rely on ladders or continua to conceptualise public involvement (2007, p. 252).

Based on Arnstein’s ladder, the International Association for Public Participation (IAP2) has developed a ‘spectrum’ of participation which identified five key stages, ‘inform’, ‘consult’, ‘involve’, ‘collaborate’, and ‘empower’ (2004). The spectrum outlined the goal and the “promise to the public” (i.e., what the organisation initiating the process undertakes to do for the participants and the degree of influence those participants will have over the outcome) inherent in each stage as well as listing suggested participatory techniques appropriate at each stage.

The public participation spectrum was founded on the seven IAP2 core values for public participation:

- acknowledgement that those affected by a decision have a right to be involved in the decision-making process;
- participants’ contribution will influence the decision;
- public participation promotes sustainable decisions;
- actively seeking and facilitating the involvement of those potentially affected by or interested in a decision;
- seeking input from the participants on the design of the process;
- providing the necessary information for meaningful participation; and
- communicating to participants how they affected the decision (IAP2, 2007, n.p.).

Healy argued, however, that these core values lack “any sense that these ‘core values’ might embrace public contributions beyond ‘interests’ and ‘needs’ or that the public, in addition to requiring ‘information’, might have some ‘information’ (or more properly ‘knowledge’) to contribute” (2009, p. 1653).



INCREASING LEVEL OF PUBLIC IMPACT

INFORM	CONSULT	INVOLVE	COLLABORATE	EMPOWER
Public Participation Goal:	**Public Participation Goal:**	**Public Participation Goal:**	**Public Participation Goal:**	**Public Participation Goal:**
To provide the public with balanced and objective information to assist them in understanding the problems, alternatives and/or solutions.	To obtain public feedback on analysis, alternatives and/or decisions.	To work directly with the public throughout the process to ensure that public concerns and aspirations are consistently understood and considered.	To partner with the public in each aspect of the decision, including the development of alternatives and the identification of the preferred solution.	To place final decision-making in the hands of the public.
Promise to the Public:	**Promise to the Public:**	**Promise to the Public:**	**Promise to the Public:**	**Promise to the Public:**
We will keep you informed.	We will keep you informed, listen to and acknowledge concerns and provide feedback on how public input influenced the decision.	We will work with you to ensure that your concerns and aspirations are directly reflected in the alternatives developed and provide feedback on how public input influenced the decision.	We will look to you for direct advice and innovation in formulating solutions and incorporate your advice and recommendations into the decisions to the maximum extent possible.	We will implement what you decide.
Example Tools:	**Example Tools:**	**Example Tools:**	**Example Tools:**	**Example Tools:**
• fact sheets • web sites • open houses.	• public comment • focus groups • surveys • public meetings.	• workshops • deliberate polling.	• citizen advisory committees • consensus-building • participatory decision-making.	• citizen juries • ballots • delegated decisions.

Figure 3.2: IAP2 public participation spectrum (Source: IAP2, 2004)

3.3.2 Barriers to participation

Four broad categories of barriers to participation were identified in a study of public participation under the RMA by the Parliamentary Commissioner for the Environment:

- the public's lack of awareness of RMA procedures and failure to recognise the importance of becoming involved as early as possible in the planning process;
- inappropriate council management of decision-making processes…;
- lack of resources (people, skills, funding) for the public to participate;
- the nature of statutory procedures (including time available and the adversarial nature of hearings) (1996, p. 1).

These barriers continue to be discussed in the literature on public participation in resource management decision-making. For example, Saunders noted that, although

local authorities can go beyond ‘consultation’, it is debatable whether this occurs in a meaningful way (2012, p. 36). This conclusion was supported by Gunder and Mouat, who stated

> The RMA appears to provide the legislative structure for [objecting to and appealing against undesired action by others on one’s environment]…but access to this right is artfully limited for reasons of administrative efficiency and effectiveness via mechanisms of timeliness, knowledge and resources (2002, p. 130).

Gunder and Mouat argued that RMA decision-making processes are “privileged and exclusive”, with access “based on cultural and financial capital – knowledge (including strategic awareness), access to expertise and resources” (2002, p. 131). These barriers to participation in resource management decision-making processes under the RMA were also identified by Jackson and Dixon, who argued that the intention of the RMA to conceptualise “the public exercise of influence over the location, type, and scale of development” (2007, p. 108) is “increasingly being subsumed by technocorporatist modes of decision-making” (p. 118). Oram made the same point: “council staff, politicians, lawyers, the courts and business interests have dominated the process, crowding out the public” (2007, p. 31). Together, these works highlighted the barriers associated with not being well-informed about or familiar with processes and institutions where decisions are made.

Recent exploratory research by Stephenson and Lawson (2013) catalogued a similar series of barriers to participating in resource management decision-making processes, drawn from international sources. These also included feeling intimidated by vocal representatives of minority views, and distrust of planning processes (p. 28). Their case-study involved submitters and non-submitters living near two proposed wind farm developments, and focused on why non-submitters (often assumed to be ‘the silent majority’) chose not to make a submission. They found that non-submitters were generally less well-informed (in part because information had not been provided to them), felt “apprehensive or ill-informed about the planning processes, …[or] powerless to influence planning decision-making” (p. 31). The results of this exploratory study supported the findings of other research, focused on non-expert participants that identified barriers to participation in resource management decision-making processes.

As discussed above (section 3.2) researchers and commentators on the EPA managed board of inquiry process highlighted the impact of the nine month time limit on non-expert participation (Abes et al., 2011; Cronwright et al., 2011; Linzey et al., 2013). This is emerging as a barrier to non-expert participation in resource-management decision-making, specific to national consenting processes.

3.4 Conclusion

The first group of literature examined in this chapter was focused on the EPA. This material predominantly analysed the EPA's structure and the resource consenting processes it manages generally, rather than providing in-depth consideration of particular decisions or specific issues associated with decisions made by a board of inquiry. It was found that New Zealand's EPA has a very limited range of functions in contrast to overseas EPAs, and is unlikely to result in significant improvements to New Zealand's environment. The risk of ministerial influence inherent in the structural arrangements, the lack of a specific mandate to protect the environment, the perception that the EPA exists to fast-track major infrastructure and the likelihood that the processes managed by the EPA will reduce opportunities for public involvement in resource management decision-making were emphasised.

Case studies of the Tauhara II and Waterview Connection proposals give some insight into those particular processes from the perspective of the EPA or the applicant's planning staff and consultants. These practitioners highlighted their concerns that the restricted timeframe for national consenting processes and large volume of information generated through these processes are in fact impacting on public participation.

The chapter also provides an overview of two limited aspects of participation in resource management decision-making relevant to this research. The first of these is authoritative frameworks of public participation that outline the degree of influence participants have in decision-making. The other focus is barriers to participation under the RMA, particularly for non-experts. These barriers are largely associated with the domination of resource management decision-making processes by institutions and their experts and lack of resources (time, skills and funding), and have been identified consistently since the RMA was enacted in 1991.

The next chapter, the research method, describes how this research has been undertaken. It evaluates the choice of method, the evidence used and the robustness of the research process.

4. Research Approach

4.1 Introduction

The question that this research seeks to answer is 'What has been the effect on non-expert participation in environmental decision-making in New Zealand of the 2009 'simplifying and streamlining' reforms of the RMA?' It is an investigation into and evaluation of 'national consenting processes', managed by the EPA. In particular, it compares participation by non-expert submitters on applications for resource consent when the decision is made by a board of inquiry and managed by the EPA, and when the application is processed by local authorities using the 'conventional' pathway.

Two case studies have been compared, using thematic analysis of the content of publicly available documents. The comparison was made between a proposal of national significance called in by the Minister for the Environment, processed by the EPA and decided by a board of inquiry, and a proposal for the same type of activity where the application was administered by local authorities and decided through a conventional resource consent hearing. It focuses on roading and compares the participation and influence of non-experts in the Waterview Connection and Cambridge Expressway proposals.

4.2 The research approach – thematic analysis of case studies

Case study research involves "systematically gathering enough information about a particular person, social setting, event, or group to permit the researcher to effectively understand how the subject operatives or functions" (Berg & Lune, 2012, p. 325). Yin states that a researcher "would want to do case study research because you want to understand a real-world case and assume that such an understanding is likely to involve important contextual conditions pertinent to your case" (Yin, 2014, p. 16). It is an appropriate method to research the effect of the streamlined consenting process on participation by non-experts because it enables deep understanding of a real-life event, allowing "investigators to focus on a "case" and retain a holistic and real-world perspective" (Yin, 2014, p. 4). By comparing examples of proposals with similar characteristics that were processed differently, an understanding of the implications of the processes on non-expert participation within the two cases can be developed.

Thematic analysis of documentary evidence allows the researcher to focus on what is being said in the record created by the consenting process – the narrative – rather than how it is said (Riessman, 2008). This type of analysis is particularly appropriate for this research project for two reasons.

Firstly, the convention is that consent processes will be transparent, properly documented and the documents available to the public. Every consent planner knows that those documents, 'the file', tell the story and may be looked to in future for reasons as mundane as responding the Ministry for the Environment's two-yearly survey of local authorities (2001/2002-) or, less frequently, to respond to appeals or judicial review proceedings. Thus, it should always be possible to gain a deep understanding of the official narrative through the documentary record.

Secondly, a consent process is a type of story. The documents associated with it reveal what a person, company or organisation (the applicant) wants to do, why they want to do it, and what they see will be the impact of the proposal on the environment, individuals and society as a whole. They also reveal how others believe the proposal will affect them and their environment, either through their personal understanding and experience, or through their technical expertise. This can be anything from a conversation to a debate – after all, what is most fundamental about these processes is that planning issues are contested. They are contested in their process and they are contested in their outcomes. In making choices about places, different knowledge and lived experiences rub up against one another, raising questions about whose knowledge constitutes proof, and, indeed, what constitutes proof… (Campbell, 2002, pp. 277-278).

Thus, as the process progresses, the parties' understanding and viewpoints will often change as they learn from and negotiate with each other, and the steps towards this change will generally be recorded. Ultimately, the documents record where there was agreement and what the decision-makers gave weight to in order to decide what the outcome of the story will be.

4.3 Evaluating the research method

Evaluating the quality of the research method is often based on the criteria of reliability and validity, measures which have been derived from the evaluation of quantitative research. While these have been adapted for use in evaluating qualitative research,

Guba and Lincoln (1994) propose that there is a more appropriate range of evaluation criteria for quantitative research methods: trustworthiness (comprised of credibility, transferability, dependability and confirmability) and authenticity. While these and other alternative criteria have not been widely adopted, it is important to address which criteria are appropriate in assessing the research method and results of this study (Bryman, 2012).

For example, it is important to acknowledge that a case study does not, and is not intended to, provide a generalisation that can be applied to all resource consents processed in New Zealand; it is in no way to be construed as a 'sample'. As such, the method's external validity is weak in comparison to quantitative research methods (Bryman, 2012). However, Guba and Lincoln (1994) argue that generalised data is, conversely, rarely applicable in individual cases and qualitative data is a means of removing the ambiguities associated with quantitative data. Thus, the criterion they call transferability parallels external reliability, a criterion that is both difficult to verify and largely inappropriate to qualitative research methods. Transferability instead involves considering not whether the findings will be the same in another context or the same context at a different time, but whether the findings contribute to the knowledge base that can be drawn on by other researchers.

The validity of the research method and results – the clear connection between the data gathered and the findings (Bryman, 2012) – must also be established. This will be achieved by first describing a robust method of research, based on more than one set of data and carried out in a demonstrably open way. The analysis of the data and the findings based on that analysis must also be described in such a way that it is clear how the findings were arrived at, and that the findings themselves are reasonable. By meeting this criterion, the transferability of the study will also be achieved.

Triangulation of the data is another method for establishing the research's validity. This method was undertaken by using multiple points of comparison within each case and looking at the experiences of a range of the participants who fit the criteria.

Another important consideration in establishing validity is an assessment of the quality of the documents used for the research (Scott, 1990). This assessment is set out below (section 4.6).

4.4 Choosing the cases

The cases were chosen by first considering the proposals that had been decided by a board of inquiry by November 2011 that had also been processed by the EPA under the 'simplified and streamlined' requirements of the 2009 amendment to the RMA. This was primarily because the EPA was so new and had been involved in the processing of very few applications. In fact, by November 2011 only six applications referred to a board of inquiry had had final decisions notified: Hauāuru mā Raki (Waikato Wind Farm), Turitea Wind Farm, Waterview Connection, the Men's Prison at Wiri, Transmission Gully Plan Change and Tauhara II Geothermal Development Project. Of these six, two (Hauāuru mā Raki and Turitea Wind Farm) had been called in prior to the establishment of the EPA and had not been subject to the nine month processing timeframe.

The four remaining decisions were for an alteration to a designation (Men's Prison at Wiri), a plan change (Transmission Gully), resource consents (Tauhara II) and a combined resource consent application and notices of requirement (Waterview Connection). I decided to focus on the proposals that involved resource consents principally because I considered that there were likely to be a broader range of environmental effects associated with resource consents, so that they might attract a broader range of non-expert participation in the process. A second consideration was that I had initially thought I would study two boards of inquiry cases for this research, and wanted two proposals of a similar nature. This eliminated the Men's Prison at Wiri and the Transmission Gully Plan Change proposals, neither of which included applications for resource consent.

The two proposals that remained were Waterview Connection, a proposal by the NZTA to complete the Western Ring Route in Auckland, and Tauhara II, a proposal by Contact Energy Limited to build and use a geothermal power generation operation in Taupo. I then requested relevant documents from the EPA as most of the material relevant to the application phase of the proposal had been removed from their website once the final decision had been released. The EPA provided most of the documents I requested from them; however, they advised me to obtain the applications from the applicants as these were stored off-site. I attempted to do this rather than pursue an official information request to the EPA initially. However, I received no response to a phone call and email from the person I was referred to within the planning team at

Contact Energy Limited. The person I contacted at NZTA, however, was extremely helpful and provided the requested documents.

The submissions on the proposals were made available (as is usual practice) on the EPA website but were removed once the Boards' decisions were final. At a later date, while attempting to determine which of the submitters to the Waterview Connection proposal had withdrawn their submission prior to the hearings[17], it was necessary to make a formal request to the EPA under the Official Information Act 1982 to obtain this information.

During the period I was obtaining documents, I reconsidered studying two cases and decided to concentrate on a single board of inquiry case, as I believed that focusing on one would enable a deeper understanding of the context and background. Dyer and Wilkins argue that while multiple case studies may have strengths, the in-depth study of single cases enables the researcher "generally to provide a rich description of the social scene, to describe the context in which events occur" (1991, p. 615), "a much more coherent, credible and memorable story" (p. 616). It is also important to acknowledge the constraints of post-graduate study. The examination and comparison of one board of inquiry case with one 'conventional' case provides better opportunity for deeper understanding and analysis of the data, and thus a more useful contribution to the body of knowledge, than is possible from a lower level analysis across a range of cases.

I then needed to identify a similar proposal for comparison. The specific criteria for this case were that:

- it had been decided using the conventional path;
- it had been fully notified and heard; and
- the decision had been notified by November 2011 (to allow sufficient time for a decision to be made within the time available to complete the research).

It was important that the application had been fully notified for it to be considered similar to the streamlined proposal, because full public notification is not limited in who

[17] The *Final report and decision of the Board of Inquiry into the New Zealand Transport Agency Waterview Connection Proposal* (2011a) notes that five submitters had withdrawn (p. 22, para. 40).

is deemed to have an interest in the proceedings. In contrast, during a limited notification process the planning officer uses his or her judgement, with some guidance from the RMA, to decide who is considered to be affected and therefore who has the right to participate in the consent process.

I also considered whether it was essential for the process to have included a pre-hearing meeting and decided it was not. This was because, although it is a step in the process that should involve non-expert submitters, whether or not it occurs can speak to other matters including the effectiveness of the process, and the efficiency of the consenting authority. The purpose of a pre-hearing is to define and, where possible, narrow the matters that will require resolution by the hearing commissioners. Where this purpose is achieved outside a pre-hearing, or the positions of the different parties are obviously intractable, there may be practical reasons for a pre-hearing not to take place.

Using these criteria, I sought the advice of planning staff at NZTA. Based on their knowledge of the suite of 'roads of national significance' projects that had already been consented, it was suggested that the Hamilton to Cambridge section of the Waikato Expressway would be an appropriate comparison. This involved publicly notified notices of requirement and an application for resource consents, granted from Waipa District Council, Waikato District Council and Waikato Regional Council in a joint hearing. Many of the documents relating to this proposal were available on the Waipa District Council[18] website and those that were not were provided by that Council or its consultant planner on request.

4.5 Carrying out the analysis

The case studies involved analysis of documents that described the participation of non-experts in both processes. Two groups of documents were studied. The first group came from the formal record of the process required by the RMA: the application, submissions, record of pre-hearings and the decision. The second was the record of any additional meetings between the parties, the results of surveys and other feedback from the parties about the process itself. These provided insight into how the process unfolded and how those directly involved viewed it. Because this material

[18] Waipa District Council was the 'lead agency' for this process, responsible for co-ordinating the administration and organisation of the joint hearing.

forms part of the public record, I can be confident that all relevant documents have been obtained and studied.

This analysis focused on the following themes:

- the *opportunity* for participation by non-experts;
- the *impact* of non-expert participation on the final decision; and
- the *perception* of the parties engaged in the process as to how the process impacted on these two matters.

4.6 Identifying and assessing the documents

Two types of documents were studied. The first group was those from the formal record of the consent process. I identified the following types of documents as those which would provide data relating to participation by non-experts and the influence of that participation on the outcomes of the consent process:

- the application and assessment of environmental effects (to understand the nature and extent of the proposal; may also include reference to pre-application consultation);
- EPA recommendation to call-in;
- ministerial call-in;
- submissions and summary of submissions (to identify non-expert submitters and their issues);
- records of pre-hearing meetings;
- records of caucusing, including how non-expert submitters' issues were considered and the results of the caucusing conveyed back to non-participants;
- draft decisions;
- feedback / comment on draft decisions, in particular by non-expert submitters; and
- final decisions.

The second group was less formal but still directly related to the consent process:

- records of any less formal meetings / agreements between the parties, in particular those involving non-expert submitters (this will also provide insight into the *opportunity* for participation); and
- any surveys of participants or reporting on the process itself.

As discussed above (section 4.3) the quality of these documents must be assessed to establish that the research based upon them can be considered valid and reliable. Scott argues that there are four criteria for assessing the quality of all types of evidence:

1. *Authenticity*. Is the evidence genuine and of unquestionable origin?
2. *Credibility.* Is the evidence free from error and distortion?
3. *Representativeness*. Is the evidence typical of its kind, and, if not, is the extent of its untypicality known?
4. *Meaning.* Is the evidence clear and comprehensible? (1990, p. 6)

As the documentary evidence base for this research is principally the public record of the Cambridge Expressway and Waterview Connection proposals, it is unquestionably authentic. The evidence that falls outside the public record is the two 'lessons learnt' reviews of the Waterview Connection project (Grounds, 2011; van Voorthuysen, 2010), which were commissioned by NZTA to inform improvements to that organisation's utilisation of national consenting processes. As their origin, purpose and results are clearly recorded, they too are unquestionably authentic.

The credibility of the documentary evidence lies in the degree to which it is complete. In both cases all application, submission and decision documents were made available and utilised, as was material circulated prior to hearings to support submissions and evidence. Submitters will often also bring speaking notes or material which then becomes part of the written record of the hearing, but these are generally less accessible where they are not pre-circulated or supplied electronically. Where any such material was provided it has been incorporated into the study, but from reading the report and decision of the Waterview Connection Board of Inquiry (Board of Inquiry into the New Zealand Transport Agency Waterview Connection Proposal, 2011a) it can be inferred that some material presented to the Board of Inquiry during hearings has not been provided. However, as this material is in support of the submission, and cannot add any new topics into the process, the submission documents in conjunction

with the other parts of the record are sufficient to identify the issues raised, views of and impact on the decision by non-expert submitters.

In terms of representativeness, the documents are typical in that they are for the most part described and provided for through the provisions of the RMA. There are two exceptions to this: the written material tabled at the Cambridge Expressway hearing by some of the non-expert submitters in support of their submissions and the lessons-learnt reports. These are, however, not untypical; as discussed above, it is not unusual for submitters to prepare speaking notes or material to support their submissions. Reviewing consenting processes and consent authority performance is also not unusual, through surveys of consent holders or regular audits of best practice[19]. NZTA also conducted a lessons-learnt review for the Transmission Gully Motorway and Christchurch Southern Motorway; these reviews are a tool NZTA has been employing to understand how to optimise their use of the national consenting process (Willoughby, personal communication, August 19, 2013).

Another issue to consider in relation to the representativeness of the data is the volume of material generated through the Waterview Connection national consenting process, compared to the conventional Cambridge Expressway process. While the Waterview Connection generated such significant volumes of information that the Board of Inquiry report (2011a), submitters and others involved in the process (Cronwright et al., 2011) all commented on it, this is unsurprising given the scale of the proposal; as discussed in section 6.2, each of the nine sectors of the Waterview Connection application is arguably similar in extent to the entire Cambridge Expressway proposal. The volume of documentation, large number of submitters and lengthy report are all commensurate with the size of the proposal, and are therefore representative within that context.

The documentary evidence from the two cases is both clear and comprehensible, in that a consistent approach could be taken to analysing both sets of evidence despite the differences in their extent. A series of distinct themes emerged from that evidence through the analysis, in answer to the research question posed.

[19] For example, Horizons Regional Council routinely includes a survey form when sending resource consent decisions to applicants and the Regional Council Consents Managers Group regularly conducts a collective best practice audit of consent processes.

4.7 Identifying the participants

To identify the non-expert submitters, it was first necessary to consider how this group would be defined for the purpose of this research. This was done by describing the broad categories different participants fall into, as has been done in the table attached as Appendix A. As the descriptions show, the boundaries between the participants and their role in the process are not always clearly delineated.

For this project, a non-expert submitter is in the first instance an affected or interested party. She, he or they will not personally have technical or planning expertise relevant to the proposal. Non-expert submitters can engage experts and/or advocates to assist with presenting their submission and / or evidence, if they have sufficient resources; however, by doing so they become expert participants. For the purposes of this research, any party who indicated in their submission that they would use, or did use, an expert or advocate was not considered to be non-expert. Likewise, submitters from a company or public interest group with sufficient resources to employ expertise full time, was not included in the group being studied.

Anyone submitting on behalf of an iwi (tribe) or hapū (sub-tribe) was also considered to be an expert. Under the RMA, "the relationship of Maori [sic] and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" (s 6(e)) is specifically recognised as a matter of national importance. This provision acknowledges Māori status as tangata whenua (the indigenous people) and their traditional relationship with natural resources (Ryks, Wyeth, Baldwin, & Kennedy, 2010). Submitters for iwi and hapū provide information about the nature of that relationship which is vital to achieving the purpose of the RMA, based on their expert knowledge of that iwi or hapū's history and traditions.

The non-expert submitters in the two consent processes in this case have been identified by analysing the submissions to the applications. Because one aspect of this research is the impact made by the non-experts on the final decision, the main focus was on identifying those non-expert submitters who, in the first instance, indicated their willingness to participate in the hearing process and then analysing in more detail those submissions by non-experts who did appear at the hearing or the Board of Inquiry.

4.8 Comparing the two cases

One of the challenges of undertaking a comparative case study where the two cases are very different is devising a method of comparison which takes those differences into account, from which valid findings can be drawn. As discussed in section 4.6, the documentation associated with the Waterview Connection proposal was considerably more extensive than the documentation for the Cambridge Expressway. Other differences were the extent of the effects of the two projects, the number of non-expert submitters, and stylistic differences between the *Recommendations of the independent hearing commissioner appointed by Waipa and Waikato District Councils and decisions of the independent hearing commissioners appointed by the Waikato Regional Council* (Withy, Shearer, Sinclair, & Pene, 2011) and *Final report and decision of the Board of Inquiry into the New Zealand Transport Agency Waterview Connection Proposal* (2011a).

This challenge was overcome firstly by undertaking the analysis using the same or equivalent sets of documents in both cases. Regardless of the extent of evidence, by examining documents generated at the equivalent stage in the two processes it was possible to understand and compare the experience of the non-expert submitters participating.

The main difference in approach in the analysis was the proportion of submitters examined. For the Cambridge Expressway, the experiences of all non-expert submitters who were heard or represented at the Hearing have been analysed. This was possible because each of these submitter's concerns and the response of the hearing panel was described in the decision. In contrast, a selection of experiences of non-expert participants in the Waterview Connection process is analysed for several reasons. The report of the Board of Inquiry does not record all of these submitters' concerns or their influence over the decision and conditions completely; those that have been analysed are those who have received the most comment in the report. It was also unnecessary to fully analyse every non-expert submitter's experience, because, as discussed in section 5.4.8, further analysis would not have contributed any additional findings to the main themes that had emerged.

4.9 Ethical considerations

This research has been conducted in accordance with the Massey University Code of ethical conduct, which is based on the following major ethical principles:

a) respect for persons;

b) minimisation of harm to participants, researchers, institutions and groups;

c) informed and voluntary consent;

d) respect for privacy and confidentiality;

e) the avoidance of unnecessary deception;

f) avoidance of conflict of interest;

g) social and cultural sensitivity to the age, gender, culture, religion, social class of the participants; and

h) justice (Massey University, 2010, p. 4).

While this research project does not involve direct human participation (as it is an analysis of documents) these ethical principles must still be considered where they are applicable. Of particular relevance is the avoidance of conflict of interest, which I have achieved by focusing on cases that are both physically and administratively outside the region where I work.

It is also important to note that privacy and confidentiality does not have to be preserved in this research. All documents that have been accessed are publicly available, and any individuals named have given their details on the understanding that consent processes are public processes. All participants and contributors have consciously involved themselves in the public record, and this research has utilised that public record.

Based solely on document analysis and not directly involving people, this research did not require formal approval.

4.10 Conclusion

This chapter has described the way the research was designed and undertaken, including an assessment of the method and the evidence using a range of criteria applicable to qualitative research methods. To date there is very little published research on the use of the board of inquiry decision-making process for proposals of national significance. This research seeks to gather data on one aspect of these processes – how the views of non-expert submitters are incorporated into the process and decision – to assess the effects of the simplification and streamlining of the RMA. This will be achieved by carrying out a thematic analysis of public documents from two case studies and comparing them, to identify how non-expert submitter participation is affected by the different processes carried out in each case.

5. Findings

5.1 Introduction

The data gathered for this research is derived principally from key public documents that provide the record of non-expert submitter participation in the resource management decision-making for two roading projects: the Cambridge section of the Waikato Expressway, and Waterview Connection. This chapter provides some background to each case, and then presents data on the non-expert submitters' involvement in the process and their influence on the final decisions.

5.2 Background

5.2.1 'Roads of National Significance'

In 2009, the Government announced it would be making a substantial investment (one billion dollars) in the development of 'Roads of National Significance' (RONS) (Key & Joyce, 2009). Initially, seven RONS were "singled out as essential routes that require priority treatment… to reduce congestion, improve safety and support economic growth" (Joyce, 2009). Both of the roading projects that this research focuses on were identified as RONS.

5.2.2 'Simplified and streamlined' processing

Application and notices of requirement for both proposals, required by the RMA, were lodged after 1 October 2009.[20] Both were subject to the 'simplified and streamlined' consent processing provisions implemented through the 2009 amendment to the RMA.

The main impact this legislation had on these particular proposals was the stricter restrictions on the time taken for processing. For applications processed by a local authority (i.e. Cambridge Expressway) further information could only be requested from the applicant once before notification[21], and once between notification and the hearing with the 'clock stopping' (s 88C(1)). The time taken for the applicant to provide the information requested under this provision was excluded from the number of days

[20] The application and notices of requirement for the Waterview Connection were lodged on August 20 2010, and for the Cambrige Expressway on January 7 2011.
[21] However, further information could be requested separately by each of the local authorities the application was made to.

taken to process the application. Notification of the decision of the hearing panel had to occur within fifteen working days of the close of the hearing (s 115(2)). At the same time, councils were required to adopt a policy to discount consent processing charges where timeframes were not met and it was the council's fault (s36AA(3)), up to 50 percent of the total charges (reg 9(8) Resource Management (Discount on Administrative Charges) Regulations 2010), to apply to all applications received from July 31 2010 (reg 4 Resource Management (Discount on Administrative Charges) Regulations 2010).

Particularly stringent is the national consenting process requirement for decisions on proposals that have been referred to a board of inquiry (i.e. Waterview Connection). These decisions must be notified no longer than nine months after public notice of the referral. Only the Minister for the Environment can extend this deadline. Until August 2013 this nine month deadline did not exclude days defined as 'non-working' in section 2[22]. The Board of Inquiry for Waterview Connection (the Board) was granted a nine working day extension to make their decision, giving them until 30 June 2011 to provide their final report (The Board, 2011c).

5.3 Cambridge Expressway

5.3.1 Background

The Waikato Expressway is a section of State Highway (SH) 1 from the Bombay Hills to south of Cambridge approximately 100 kilometres (km) long, which was deemed to be a RONS in 2009 (Joyce, 2009). Some sections had been completed in the previous decade, but the 2010 *Project Summary Statement* indicated the NZTA's intention to complete the project by 2019. The completed road will be a four lane divided highway and involves widening the existing road or developing greenfield bypass routes (NZTA, 2010i).

The Cambridge Expressway, also referred to as the Cambridge Bypass or the Waikato Expressway – Cambridge Section (the Expressway), forms the southern-most 11.6 km section of the RONS (NZTA, 2010b, 2010c) and will establish a bypass north and east of the town of Cambridge (NZTA, 2010i). The route for the Expressway was originally

[22] Between October 2009 and August 2013 (when the Resource Management Amendment Act 2013 was passed) the days excluded from processing timeframes in the RMA (s 2), including the days from 20 December to 10 January, were not excluded from the nine month timeframe for a board of inquiry to deliver its final decision.

designated in 1973 and, after a number of investigations which considered alternative routes both within and around Cambridge township, was confirmed in 1991 as the preferred route (Ryan, 2010). A map of the proposal is included as Appendix B. It will run through or beside rural areas and residential areas, including the new 'St Kilda' residential development to the north of the town (M. Smith & Smith, n.d.), and is expected to address a number of existing and worsening issues including congestion and high crash rates (NZTA, 2010b, p. 5).

By March 2010, NZTA was preparing alterations to designations and resource consent applications. It expected that "All of these issues can be managed effectively through the traditional consenting processes" (NZTA, 2010i, p. 8).

5.3.2 The application

The application was made to three councils: Waikato Regional Council, Waipa District Council and Waikato District Council. It was comprised of notices of requirement to the District Councils to amend the existing designations by adding adjacent areas (predominantly north and east) (NZTA, 2010b; 2010c; Opus, 2010), and applications for ten resource consents lodged with the Regional Council (NZTA, 2010h).

The purpose of the designations was

> the construction, operation and maintenance of the 11.6 km Cambridge Section of the State Highway 1 Waikato Expressway… and ancillary works, including connections to the local road network, stormwater treatment, mitigation works (including relocation of services, landscaping and noise mitigation), and activities associated with these works (NZTA, 2010b, p. 1).

The altered designation would ensure that there will be sufficient width to construct the Expressway by limiting activities that could interfere with the "safe and efficient movement of expressway traffic and ancillary activities associated with the construction, operation and maintenance of the Cambridge Section" (NZTA, 2010b, p. 2). The notices of requirement indicate that the area designated could be reduced once the Expressway has been completed.

In addition to the four-lane Expressway, the project included three interchanges; twin viaducts over the Karapiro Stream Gully and an access track into the gully; three

two-lane overbridges for three local roads; realignment of two local roads; temporary construction works and access; safety and noise barriers; vegetation removal, and restoration landscaping and planting; swale drains and stormwater facilities; and approximately 70 culverts under the highway. Four local roads (Discombe, Forrest, Hannon and Watkins Roads) would be severed, with no access to the Expressway from these roads (NZTA, 2010b, p. 2).

Ten applications for resource consent were made to the Waikato Regional Council, for land use (soil disturbance, roading, tracking, vegetation clearance and depositing cleanfill, construction of culverts, and construction of a temporary bridge and permanent viaduct over the Karapiro Stream), water takes (surface and groundwater), and discharges of stormwater (to land and water) (NZTA, 2010h, p. 2). At the time of lodging the application, it was expected that construction would take place over four years, between September 2012 and May 2016.

5.3.3 The submitters

There was a total of thirty submitters to the proposal. Twenty-eight of the thirty made submissions on the NOR, twenty-six of these twenty-eight to Waipa District and eight to Waikato District (six of them submitted to both Councils). Nineteen of the thirty made submissions to Waikato Regional Council on the application for resource consents; seventeen of these nineteen were also submitters to Waipa District. NZ Historic Places Trust was the only party to submit to all three of the councils.

The thirty submitters included individuals, couples, and bodies such as businesses, Crown entities or trusts. For the purposes of this analysis, the party or parties in whose name the submission is made will be referred to a single submitter[23]. I considered ten to be expert submitters for the purpose of this research, because:

- they were national or international companies who had employed, or had capacity to employ or contract appropriate resource management expertise; for example Bunnings, Transpower and Fonterra;
- they employed a lawyer (i.e. an expert advocate) to prepare their submission; for example Murlyn Trust, FP & LE Cornege and Emanem Trust;

[23] For example, E B and J C Horner made a joint submission but will be referred to as one submitter.

- they were a Crown entity submitting only on matters the organisation is routinely engaged with and mandated to protect though legislation; i.e. New Zealand Historic Places Trust.

None of the non-expert submitters made submissions to Waikato District.

There was some evidence that three of the submitters that I categorised as non-expert had consulted a lawyer: Megan Piper and M Griffin's form had been faxed from a law firm, while both submissions by JE Mark had been stamped with another law firm's contact details. However, all three submissions were hand-written and signed by the submitters themselves, and did not have a representative as their address for service. On balance I considered them to be non-expert.

5.3.4 The submissions

The format of the submissions prepared by the non-expert submitters varied. All but one[24] of the nineteen non-expert submitters used the submission forms provided by Waipa District Council and Waikato Regional Council (see Appendices C and D respectively). These had been pre-prepared with the type of application, name of the requiring or consenting authority as appropriate (i.e. the applicable council) and the proposed designation or consent. The Waipa District form also included the location of the designation and a page of generic information about the process and the legal requirements (such as serving a copy on the applicant) for making a submission. These forms were closely based on 'Form 13' (Resource Management (Forms, Fees, and Procedure) Regulations 2003), "Submission on application concerning resource consent or esplanade strip that is subject to public notification or limited notification by consent authority". None of the submitters to Waikato District Council used a form.

Submitters to Waipa District filled out the following sections:

- Name of submitter, including address for service and other contact information;
- The specific parts of the notice or requirement that the submission related to, including whether the submitter supported, opposed or wished to amend it;

[24] P and D Robinson wrote a letter which was sent to both Waipa District and Waikato Regional Councils. The copy sent to the Regional Council included two additional handwritten sentences. The letter was apparently a copy of one previously sent to Waipa District Council some three weeks prior to the submission copies.

- The reasons for the submitter's views;
- The recommendation or decision sought by the submitter from the territorial authority; and
- Whether the submitter wished to be heard in support of their submission and would consider presenting a joint case with others if they were making a similar submission.

There was a note at the beginning of the form that all sections needed to be completed. The sections where submitters needed to list the specific parts of the notice that their submission related to, the reasons for their views and the recommendation or submission sought were small; four, six and seven lines respectively. However, there was no mention on the form that additional material could be attached to the form if there was insufficient room. The form had to be signed (unless it was being sent electronically) and dated. Fifteen of the non-expert submitters[25] used this form alone, and several of them made only extremely brief comments on a single issue. The other two submitters that used the form attached additional comments and/or supporting information.

The Waikato Regional Council form was very similar in content to the Waipa District form. It did not have any instruction that all sections needed to be completed, nor did it acknowledge that submissions could be sent in electronically[26]. The form included an instruction that, if the submission was faxed, the original needed to be sent by post. Submitting electronically was not mentioned. As with the Waipa District form, there were only a few lines provided for submitters to outline the reasons for their views and the decision sought (five for each), and no instruction that additional material could be appended to the form. Again, several of those who used the form wrote only a few words. One non-expert submitter[27] simply ticked the form to indicate that he supported the applications, giving no additional detail as to the reasons or the decision sought from the hearing panel.

The submitters made varied responses to the questions of whether they wished to be heard. On both the Council submission forms, the answer to this question was given by

[25] ABC Land & Properties Ltd; Cambridge Community Board; Hannon; Haskell, Horner; Jackson; Jones; Kevin Mark; JE Mark (as proprietor Alus Antiques); JE Mark & Cooney Trustees; Piper & Griffin; Sim & Lynch; Transland Group; Wallace; Wilson.
[26] There was no instruction that submissions that were electronically submitted did not require a signature.
[27] T Mills.

ticking either ‘yes’ or ‘no’. All the expert and seven of the non-expert submitters wished to be heard, while two of the non-expert submitters did not respond to this question.

Of the ten non-experts that did not wish to be heard, three were willing to consider making a joint case. The non-expert submitter that did not use the form (Paul and Deirdre Robinson) did not include this information in their letter. Neither of the parties who submitted in support of the proposal wished to be heard.

5.3.5 The submitters’ views

The submissions from the non-expert submitters who either opposed or opposed in part (i.e. sought amendments to the proposal) covered a wide range of topics, which can be broadly categorised into six groups:

i. ***construction effects***, including construction dust, noise, traffic management and safety, and access to properties during construction;

ii. ***on-going effects***, including amenity (changes to the landscape and visual effects) and environmental (air quality, noise, vibration and vegetation clearance) effects, and loss of productive soils;

iii. ***stormwater***, including the treatment, design and on-going discharge of contaminants;

iv. ***property issues***, including the extent of the designation, access issues, loss of trade, effects on future residential areas and property value;

v. ***design issues***, including the height of the road, embankment, noise bund, and the Peake Road overpass, the effects on other roads and the entrances to Cambridge;

vi. ***consultation and stakeholder engagement.***

Of the seven non-expert submitters who indicated they wished to be heard, three appeared at the Hearing: Susan Jackson[28], Bruce and Annette Lasenby, and Owen Wilson. Ms Jackson also appeared on behalf of Malcolm and Stephen Wallace.

[28] Susan Jackson was also one of the members of the Board of Inquiry into the NZTA Waterview Connection Proposal. Although, as an independent commissioner, she would be an expert on the decision-making processes set out in the RMA, her personal expertise is as a civil engineer. Ms Jackson’s submission to the Cambridge Expressway focused on dust (i.e. air quality) effects on her property and she is therefore considered to be non-expert.

Eleanor Duncan-Sittlington[29], who had indicated she did not wish to be heard, also appeared. All of these parties provided written material which was provided to the panel[30]. None of these submitters was totally opposed to the proposal; however, all were seeking some amendment, (Withy et al., 2011, p. 9).

5.3.6 Consultation

As noted in section 5.3.1, the proposal for the Expressway was initiated many decades before this application was notified. The consultant planner for Waipa and Waikato District Councils commented that "…the project has been in the public realm for some time and as such a significant amount of consultation has been undertaken prior to the lodging of the NoRs" (Dawson, 2011, p. 17). The original route had been designated in 1973. Consultation was undertaken between 1989 and 1991[31] as part of the preparation of the *Cambridge bypass project investigation report* (Works Consultancy Services Ltd, 1991), which confirmed the preferred route.

The applications were lodged on 7 January 2011. A consultation plan was developed in 2007 and implemented; its purpose included "listening, considering and providing, as much as practical, for community concerns" (Ryan, 2010, p. 5). This plan identified key and other stakeholders, and utilised a range of techniques to interact with these stakeholders and the public. These techniques included public information days, newsletters, and individual meetings and communication with individuals, key and other stakeholders[32]. Pre-application consultation by the applicant with potential submitters took place from June 2007 until late December 2010. (Moore, 2011).

While there was no pre-hearing meeting, the *Consultation Report* (Ryan, 2010) lodged as part of the application noted that NZTA intended to consult with submitters to clarify their issues and discuss measures to address them. Submissions closed on 6 April 2011 and Brad Moore, the Senior Resource Planner at Hamilton Regional Office of the

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[29] The RMA does not oblige consent authorities to accommodate submitters who state that they do not want to appear and then change their mind, although there is nothing in the RMA to prevent this. Section 100 (b) states that a hearing need only be held if a submitter has "requested to be heard and has not subsequently advised that he or she does not wish to be heard" , while section 101(3)(b) states only that the consent authority must give ten days notice of a hearing to "every person who made a submission on the application stating his or her wish to be heard and who has not subsequently advised that he or she does not wish to be heard."

[30] An email from one non-expert submitter, Transland Group, was also tabled.

[31] This consultation is described in *Statement of evidence of Brad Moore (consultation) on behalf of the NZ Transport Agency* (2011).

[32] In addition NZTA carried out a consultation process with iwi groups from May 2007 (Moore, 2011; Ryan, 2010).

NZTA who presented evidence on the consultation carried out by NZTA for the Cambridge Expressway proposal, stated that NZTA had met with seventeen of the submitters and that meetings were proposed or scheduled with a further four (2011). This consultation included fifteen of the nineteen non-expert submitters; three of those not met with had submitted in support of the application, and none of the four had indicated that they wished to be heard. This approach was possible for two reasons: the number of submitters was small enough, and there was sufficient time to have the meetings before the hearing. The time restrictions for processing the application were suspended twice (once before and once after submissions had been received) while further information was supplied[33], and the periods between the application being lodged and being publicly notified, and between submissions closing and the hearing taking place were extended[34]. A timeline of the process is attached as Appendix E.

Mr Moore also described in more detail those meetings where some agreement had been reached, as at 27 June 2011; two of these meetings were with non-expert submitters, Mr Haskell and Ms Duncan-Sittlington. These parties had submitted to both Waipa District Council and Waikato Regional Council, raising the same issues in each of their submissions. The results of these meetings are discussed in section 5.3.8 below, which looks at the involvement of six of the parties in the process and outcomes that resulted.

5.3.7 The hearing

The Cambridge Expressway application was heard by a panel of four independent commissioners, one appointed by Waipa[35] and Waikato District Councils to chair the panel and make recommendations on the notices of requirement, and three by Waikato Regional Council[36] to decide the resource consent applications. The hearing was scheduled over three consecutive days, with a fourth available if necessary, at the Cambridge Raceway (Rice, 2011); all four days were utilised (Withy et al., 2011).

5.3.8 The experience of six non-expert submitters

The documents arising from the applications associated with the Expressway reveal the experience of six of the non-expert submitters in some detail. These include all of

[33] In accordance with s 92.
[34] In accordance with s 37A(4)(b)(ii) and s37A(4)(b)(i) respectively.
[35] Alan Withy.
[36] Craig Shearer, Karyn Sinclair and Maree Pene.

the non-expert submitters who appeared at the hearing. Their submissions tell of their concerns at the time the proposal was notified, Mr Moore's statement of evidence (2011) describes the consultation process and resolution of some of the matters prior to the hearing, the evidence presented at the hearing and correspondence regarding draft conditions show the matters still outstanding, and the Decision and consent conditions (Withy et al., 2011) provide the results. These submitters' experiences are outlined in this section.

Owen Haskell had concerns regarding changes to access to his property, and visual and amenity effects arising from the use of the adjoining property for the project. As a result of a meeting between Mr Haskell, two NZTA staff (Brad Moore and Raj Rajagopal, Project Manager[37]), and one of NZTA's consultants (Jeremy Gibbons, a Senior Transportation Project Engineer)[38], NZTA undertook to design the realignment of access ways into the property as closely as possible to Mr Haskell's preferences. Following the meeting, Mr Gibbons and a consultant landscape architect[39] updated or created new design to address these matters. Although Mr Haskell had indicated in his submissions that he did not want to be heard, it can be inferred from Ms Duncan-Sittlington's appearance at the hearing that he would have had the opportunity to change his mind and appear had his concerns not been addressed to his satisfaction.

Bruce and Annette Lasenby's submission was focused on the height of the noise bund between their property and the Expressway. They felt that the proposed height of two metres was not sufficient to effectively mitigate the noise and air quality effects of trucks and buses using the Expressway, and also considered that a four metre high bund with plantings would be "more visually appealing than a 2 meter [sic] bund and looking at the tops of trucks and buses wizzing [sic] by (visually disgusting)"[40].

Mr Lasenby represented himself and his wife at the hearing and tabled a written statement seeking relief consistent with their submission, i.e. an increase in the height of the noise bund adjacent to their home. The decision of the hearing panel states that

[37] NZTA (2010j).
[38] Gibbons (2011).
[39] Adrian Morton (Morton, 2011).
[40] Appendix #1 of the Lasenby's submissions.

> Unfortunately for them their desire was at odds with the results of NZTA consultation in their neighbourhood. The panel inspected their property and its vicinity, but cannot see how their desire can be incorporated, given the apparently general desire in their neighbourhood for a lower bund (Withy et al., 2011, p. 13).

The Lasenbys actively participated in the consent process – they made a submission, met with NZTA staff prior to the hearing (Moore, 2011) and appeared at the hearing – but were unable to influence the decision of the hearing panel to achieve what they sought.

Albert Wilson was principally concerned about stormwater being pumped onto and through his property, although he also raised some pre-existing grievances relating to earlier developments. In his submission he sought "A return to the status quo and stormwater piped under road i.e. culvert under Watkins Road and down Watkins Road to Mangaone Stream." The panel understood that there were three separate issues: stormwater entering his property as the result of previous drainage works; backwash water discharging over the southern boundary of his property from a water reservoir; and the proposed drainage swale to run along the length of the expressway within the designation, which Mr Wilson was concerned may also discharge onto his property.

The decision noted that only the third of these issues could be addressed through the Expressway process as the first two "are existing problems and result from work independent of the Expressway applications" (Withy et al., 2011, p. 14). These were being addressed through a different process by Waipa District Council in association with NZTA and Waikato Regional Council. Technical advice from NZTA convinced the panel that all stormwater falling into the swales would be contained within them, and the panel also recommended that the following condition be included in the consent to discharge stormwater:

> The activity authorised by this consent shall be undertaken in such a manner so as to avoid causing any new or exacerbating any existing flooding effects on adjacent land (Withy et al., 2011, p. 108).

Mr Wilson also participated fully in the process by submitting, meeting with NZTA staff and appearing at the hearing. The panel considered those of his concerns that were

matters they had jurisdiction over, and ensured conditions were included to ensure that the potential effects Mr Wilson sought to avoid would be avoided.

Eleanor Duncan-Sittlington's property was directly affected by both the original and altered designations; 2.521 hectares was to be taken originally and a further 2.001 hectares had been added in the latest design[41]. The designation effectively took a slice off the property, so that the southern boundary would be located approximately parallel to the original boundary, some 40 metres to the north (New Zealand Transport Agency, 2010d, Sheet 2).

She had raised a number of issues in her submission principally relating to the width of the designation, the height of the embankment, landscape character, stormwater, and construction and on-going effects. The consultation meeting appeared to have focused on the stormwater effects and identified that the application had shown an incorrect drainage flow path along Forrest Road. The design drawings were updated and a culvert added, which would have the effect of preventing run-off from the Expressway onto her property.

Although Ms Duncan-Sittlington had indicated on her submission that she did not wish to appear, she was able to change her mind and chose to speak to her submission. In the written evidence tabled at the hearing she stated that the concerns she had recorded in her submission remained and had not all been adequately addressed. Ms Duncan-Sittlington acknowledged that some progress had been made since the applications had been lodged, and that she had had discussions with NZTA and their consultants principally regarding drainage, with a brief discussion about landscaping.

With regard to the additional culvert under the expressway, Ms Duncan-Sittlington was satisfied that this would adequately address her concerns regarding the drain along the Forrest Road boundary of her property but wanted to ensure that the culvert would be incorporated into the design as a requirement of the granting of the designation and consents. The Decision noted "that the applicant has revised and amended the scheme drawings… which reflect the placement of a culvert under Forrest Road to maintain the flows as suggested by Ms Duncan-Sittlington" (Withy et al., 2011, p. 10).

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[41] Paragraph 3.22 of *Submission of EM Duncan-Sittlington 12 August 2011*, written material presented at the hearing.

In addition to the culvert, Ms Duncan-Sittlington spoke in detail about drainage on the southern boundary of the property. There was an existing drain that would disappear as the expressway was constructed, that NZTA had proposed replacing with swales to cope with the runoff from the Expressway. She was concerned that this would not be adequate to drain her property as well, and sought that "provision for a properly formed replacement drain to efficiently drain our property (as opposed to the expressway) is included as a condition… [and] that the Commissioners consider a condition such that the expressway stormwater is to be kept separate from the drainage system that drains our land"[42]. If this could not be achieved, Ms Duncan-Sittlington sought a condition "such that if the expressway discharges are to flow into our Forrest Road drain or other table drains that serve our property, those drains must be deepened to account for the additional flows coming from the expressway"[43]. As a result of Ms Duncan-Sittlington's evidence, the consent granted by Waikato Regional Council for the diversion and discharge of stormwater into water and onto or into land (including installation, operation and maintenance of discharges structures) included the following condition (Condition 18):

> **Duncan-Sittlington**
>
> The existing drain on the Duncan-Sittlington property running through the proposed designation in an east-west direction from approximate distance 3250 to 2650 and draining into the Forrest Road Drain, will be replaced with a similar drain in the event it is infilled. The new drain will be located within the Duncan-Sittlington property generally close to the designation boundary, with the precise location to be agreed with Ms Duncan-Sittlington (Withy et al., 2011, p. 108).

Although Ms Duncan-Sittlington's written evidence does not specify that she wanted the drain to be located on her property, it can be inferred that this must have been requested during her oral submission, as the decision states

> …Ms Duncan-Sittlington would prefer the final drain to be located within her property on the boundary with the expressway. This is because the cleaning of the drain is crucial to her farming operation and she would prefer to be able to control the operation and timing of cleaning work (Withy et al., 2011, p. 11).

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[42] Paragraph 3.12 and 3.14 of *Submission of EM Duncan-Sittlington 12 August 2011.*
[43] Paragraph 3.16 of *Submission of EM Duncan-Sittlington 12 August 2011*.

After the decision had been notified, NZTA successfully sought an amendment to the wording of this condition within the 15 day appeal period allowed to correct "minor mistakes or defects in the consent" (s 133A). This was to increase the robustness of the condition, including referring to the legal description of the property it applied to. Email correspondence between Waipa District staff and some of the commissioners (A. Withy, M. Pene, P. Roberts and B. Moore, personal communication, September 26-27, 2011) show that the latter agreed to the change provided Ms Duncan-Sittlington approved. The final wording of the condition was:

> **Replacement Drain**
>
> Provided that prior landowner approval is given, the consent holder shall replace the existing drain on the land legally described as Allotment 34 Hautapu Parish (SO96/1) (the Property) (which runs in an east-west direction from approximate chainages 3250 to 2650 and drains into the Forrest Road drain) (Existing Drain). The new replacement drain will be similar to the Existing Drain and shall be located within the Property as close to the Property's southern boundary as practicable (D. Hayler, personal communication, March 22, 2013).

The other matters raised by this submitter at the hearing related to mitigation of noise, negative visual impact and loss of privacy caused by the additional land being taken in the designation (bringing the expressway closer to the houses on the property) and the proposed height of the embankment. Ms Duncan-Sittlington sought "at the very least hedging along the expressway boundary"[44] to replace the existing boundary hedging. She opposed the mitigation that had been proposed by Adrian Morton, the landscape architect, during consultation prior to the hearing, which was "low level earth bunds and planting along the immediate boundary of her dwelling" (Morton, 2011, p. 24). In her view, this proposal would not provide sufficient mitigation of visual effects on the property as a whole, would take up additional land on the property and would block the views from the house. Ms Duncan-Sittlington acknowledged that this might have to be addressed through the compensation to be negotiated under the Public Works Act 1981, which was a separate process.

The Hearing Panel noted in the Decision that they had carried out a site visit and had noted the location of the houses in question. They accepted NZTA's evidence that

[44] Paragraph 3.24 of *Submission of EM Duncan-Sittlington 12 August 2011.*

there will be no substantial landscape effects of the expressway on the property and have not imposed any conditions requiring planting as requested. This does not preclude Ms Duncan-Sittlington from providing some planting along the boundary of her property if she chooses (Withy et al., 2011, p. 11).

Ms Duncan-Sittlington's participation included making a submission, meeting with the applicant and appearing at the hearing, despite indicating in her submission that she did not wish to. All the matters she raised at the hearing were fully discussed in the Decision, with a new consent condition included to specifically address her concerns about stormwater impacts on her property. The relief she sought in relation to landscaping was rejected by the panel; however, as for the Lasenbys, clear reasons for doing so are recorded.

Susan Jackson, and Malcolm and Steven Wallace. Ms Jackson and the Wallace's made separate submissions[45] but their concerns were centred around the effects of the Expressway construction and operation on a property on the southern side of Tirau Road, south east of the proposed Tirau interchange. This property was owned by Ms Jackson, and occupied and operated as a dairy farm by the Wallaces. Both these parties had indicated that they wished to be heard.

These submitters' comments related to:

- disruption to the farming operation, including limited access to parts of the farm during construction and removal of fencing;
- dust and noise from the construction works (which they understood would be carried out over five years);
- effects arising from construction traffic, including the possible disruption of safe access to the farm by milk tankers;
- the amount of land to be taken into the designation (which would result in the residence no longer complying with the district plan and the loss of the existing hedge);
- the treatment of stormwater contaminants from the new road; land disturbance, earthworks and vegetation clearance effects; and

[45] However, the handwriting on the forms appear to be the same person's.

- the desire to be informed about the works, and have input into aspects such as the dust and noise mitigation and landscaping.

Ms Jackson appeared for herself and on behalf of the Wallaces. While the decision recorded that "their concerns related to noise, farm access, visual amenity, removal of vegetation and construction earthworks" (Withy et al., 2011, p. 12)[46]; it mainly discussed the aspect of the potential dust effects on the buildings, and health and welfare of both the people occupying the property and the animals, consistent with written material tabled at the hearing by Ms Jackson[47]. This sought five additional conditions relating to the management of dust:

- Bare ground arising from any earthworks activity shall be revegetated or otherwise appropriately stabilized within 30 days of completion of each section of the earthworks.
- Vehicle speeds are not to exceed 15 kph on unpaved areas of the project site.
- Earthworks are to be halted in dry, high wind weather conditions.
- Visible dust on the outside of buildings within 50 metres of the Project corridor is to be removed by washing within 48 hours of a complaint being received.
- Paddocks adjacent to the project designation and affected by particulate matter are to be sprayed with potable water to wash pasture clean within 24 hours of a complaint being received.

The panel considered that condition 17 of the Regional General Conditions, requiring that a Dust Management Plan (DMP), covering a minimum range of specific matters including "a list and map of all potentially sensitive locations along the alignment … [and] complaint receipt and response procedures" (Withy et al., 2011, p. 66) be developed and supplied to the Waikato Regional Council to certify 40 days prior to the commencement of works, would go "a long way to ensuring her issues can be mitigated" (p. 12). They also required that an advice note be added after this condition that "The DMP shall ensure that 276 Tirau Road is noted as being a potentially

[46] Matters relating to the amount of land to be taken would be addressed through the processes set out in the Public Works Act 1981 rather than the RMA, and it can be inferred that the matter of the replacement hedge would have been treated in the same manner as Ms Duncan-Sittlington's landscaping issues – i.e., the commissioners decided not to impose any conditions requiring planting but that this did not preclude the submitters from doing their own planting (or pursuing this matter through the Public Works Act 1981 process).

[47] Entitled *Waikato Expressway: Cambridge Section. Conditions relevant to dust mitigation.*

sensitive receiver" (p. 12). In addition, condition 26 of the Regional General Conditions required that "there shall be no discharge of airborne particulate matter that is objectionable to the extent that it causes an adverse effect at or beyond the boundary of the subject property" (p. 71). The panel concluded that these two conditions "are appropriate and if applied will ensure the effects of dust during the construction earthworks phase on her property will be less than minor". The report continued "She consulted with NZTA and s42A reporting officers during the hearing and Ms Brosnahan [Counsel for NZTA] subsequently advised that Ms Jackson appeared satisfied with the conditions agreed between the Applicant and [reporting officers]" (p. 12).

There is no discussion in the Decision about any other aspect of the submission; given that the material tabled by Ms Jackson at the hearing refers only to concerns she and the Wallace's had about dust effects, this may have been the only matter raised in that forum.

The submitters all had the right to appeal the decision to the Environment Court (s 120) had they been dissatisfied with the outcome of the Hearing. It is noteworthy that there were no appeals of the Cambridge Expressway decision.

5.4 Waterview Connection

5.4.1 Background

Waterview Connection is the final section of Auckland's Western Ring Route and "completes the missing link between SH16 and SH20 by establishing a high-quality motorway connection" (NZTA, 2010k, p. 3). This route, when completed, will extend north from Manukau, ending in New Windsor, and will provide a 48 kilometre alternative to SH1.

The Waterview Connection proposal is the largest roading project to be undertaken in New Zealand to date, comprising approximately 13.2 km of existing and new state highway (NZTA, 2010k, p. 3). It involves upgrades to SH16 between Te Atatu and Western Springs; this is a section of highway running in a south-east / easterly direction across the mouth of the Whau River, the Rosebank Peninsula and a causeway across the Waitemata Harbour, and roughly parallel to and south of Great North Road. There will be a substantial interchange constructed north of the Waterview Inlet, between Point Chevalier and Waterview to the northwest of the Unitec Institute of Technology, to give access to the state highways from Great North Road

and Blockhouse Bay Road, and between SH16 and SH20. SH20 runs south / south east from the interchange, into a tunnel under Waterview and Avondale which will exit in Alan Wood Reserve[48].

A substantial section of the SH16 component of the project is located in the coastal marine area, including enlargement of the existing bridge over the mouth of the Whau River, and widening of the causeway between Rosebank Peninsula and Great North Road. To widen the causeway, approximately 4.2 hectares will be reclaimed in the area both north and south of the existing causeway, which will occur within the Motu Manawa (Pollen Island) Marine Reserve. These works require the involvement of the Minister of Conservation as well as the Minister for the Environment in the processes for proposals of national significance set out in Part 6AA (specifically s 148(2)).

Parts of the Waterview Connection proposal have existed since 1996; the SH20 project began then, with numerous studies, reports and reviews undertaken and tunnel / surface road options investigated, and consultation commencing in 2000 (EPA, 2010c, p. [5]). The SH16 project began in 2007. The *Final Report and Decision of the Board of Inquiry into the New Zealand Transport Agency Waterview Connection Proposal* (the Report) notes that

> The Project has essentially had a long history… During these processes there have been design, social and environmental assessments, and extensive consultation with stakeholders and the community… It is sufficient to say at this juncture, that these tasks have been undertaken with great thoroughness… There is an up-side and down-side to such an extensive period of consultation, the up-side being the extent to which the community is hopefully adequately informed, and the down-side being the period of time for which people suffer uncertainty and stress (Board of Inquiry into the New Zealand Transport Agency Waterview Connection Proposal (the Board), 2011a, p. 22, para. 38).

5.4.2 The application

The Waterview Connection proposal was lodged with the EPA on 17 August 2010 as a proposal of national significance, and on 27 August 2010 the EPA recommended that the Ministers refer it to a board of inquiry to decide. Public notice of the application,

[48] A map from the application overview document (New Zealand Transport Agency, 2010k, p. 15) is reproduced as Appendix F.

including the reasons given by the Ministers, was given on 18 September[49]. The reasons were derived from s 142(3) which lists those matters that the Ministers may have regard to in making their decision; they included seven of the ten matters set out in this section:

- widespread public concern or interest (exhibited throughout the long consultation period)
- significant use of public resources (acquisition of approximately 180 residences and loss of significant open space)
- affecting a structure, feature, place, or area of national significance (SH16 and SH20 both being structures of national significance; the Hauraki Gulf Marine Park, Motu Manawa Marine Reserve, Waterview Estuary and other parts of the coastal marine area affected by the proposal being recognised as of national significance)
- results in significant changes to the environment (due to reclamation of coastal land, loss of significant areas of public open space and acquisition of approximately 180 residences)
- assisting the Crown in fulfilling its public safety obligations (by completing the Western Ring Route as an alternative to SH1)
- affecting more than one region or district (being Waitakere City and Auckland City as the single Auckland Council did not come into existence until 1 November 2010[50]
- relates to a network utility operation extending to more than one district (EPA, 2010c).

The application divided the project into nine sectors: the Te Atatu Interchange; Whau River; Rosebank Terrestrial; Reclamation; Great North Road Interchange; SH16 to St Lukes; Great North Road Underpass; Avondale Heights Tunnel; Alan Wood Reserve. It included seven notices of requirement for new and altered designations, Notice of Requirement 1 being an alternation to an existing designation in the Waitakere District Plan and the others all relating to the Auckland City District Plan. In addition, the application was for fifty four resource consents involving works on reclaimed land, in the bed of a river and in the Coastal Marine Area, discharge of contaminants including

[49] A timeline of the Waterview Connection process is attached as Appendix G.
[50] Local Government (Auckland Council) Act 2009, s 6.

sediment to air, land and water during construction, the ongoing discharge of stormwater to water, and diversion of water and taking of groundwater (NZTA, 2010k). The application itself was physically enormous (the Report makes reference to the volume of material several times, for example on pages 5, 9, 18 and 36); 43 binders including the applications and supporting material (The Board, 2011a, p. 5, para. 3)[51]. It was made available on the EPA and NZTA websites, and hard copies could be viewed at various locations around Auckland, Wellington and Christchurch[52] "during normal office hours" (Environmental Protection Authority, 2010c, n.p.).

5.4.3 The submitters

There were a total of 252 submissions[53] on this project. I considered fifty-nine of the submitters to be expert and 193 (77 percent[54]) to be non-experts[55]. Of these 193 non-experts, ninety-seven stated that they wished to be heard and a further four who either had not wished to be heard or had not said either way in their submission appeared at the hearing. Unless otherwise stated, all references to non-expert submitters in the context of the following analysis of the Waterview Connection proposal is a reference to these 101 submitters.

Sixty-eight parties are listed in the Report as appearing (The Board, 2011a, Annexure A); some were represented by more than one person, and some appeared on behalf of themselves and one or more other party[56]. I categorised thirty-eight of the parties appearing or represented as non-expert for the purpose of this analysis, 15 percent of all submitters. One of the non-experts also appeared on behalf of another non-expert submitter.

All but four of the submitters who appeared before the Board had indicated in their submission that they wished to be heard; one had indicated she would like to appear

[51] The disc with the application documents provided by the EPA contained 3.76 GB of data.
[52] At the EPA office in Wellington, the Ministry for the Environment offices in Christchurch and Auckland, and at the Waitakere City Council, Auckland City Council and Auckland Regional Council.
[53] Five submissions were withdrawn before the Hearing, four of them non-expert.
[54] All percentages are rounded up to the nearest whole number.
[55] This does not include those submitters who originally met the criteria for non-expert but were later found to have joined with one or more submitters whom I categorised as expert, or the submitter who was represented by a resource management lawyer at the hearing; I re-categorised these submitters as expert.
[56] Annexure A (The Board, 2011a) names parties who submitted jointly as though they were separate for example, "A Bridges in person and on behalf of F Bridges". I have considered joint submitters as a single submitter, consistent with the approach taken to submitters to the Cambridge Expressway proposal.

but would be unable to, one had not wished to appear and the other two had not said. It is unclear when in the process these four submitters changed their minds[57].

The non-expert submitters were varied in type. Many were individuals; local residents and/or people who owned property that would be affected in some way. There were also clubs[58], a church[59] and community groups[60], and there was a joint submission by three members of the Green Party[61].

5.4.4 The submissions

Most of the non-expert submitters used a form specifically prepared by the EPA for the Waterview Connection proposal (EPA, 2010d). Sixty-nine of the non-expert submitters used this form; fifty-three used just the form and a further sixteen appended material.

The EPA form (attached as Appendix H) was eight pages long and prepared using a clear but small (8.5 point) font. This form listed each of the notices of requirement and consent applications in a table, with the option to tick 'support', 'support in part', 'oppose', 'oppose in part', 'neutral', or 'neutral in part' for each item, and the same options for the whole application. In addition, there were sections headed "The reasons for my/our submission are:" and "I/we seek the following decision from the Board of Inquiry" (EPA, 2010d, pp. 6-7), and submitters were asked to indicate whether they wished to be heard or not, would consider making a joint case with others making a similar submission, or intending to call expert witnesses. Although there was an instruction that this option was only available to those who wished to be heard, some submitters who had not indicated that this was the case did tick the box to make a joint case.

On page 1 there was a note that "The EPA has a preference for receiving submissions via email…" and the form was clearly designed to be submitted electronically. There were instructions that the maximum submission size was ten megabytes, and that a signature was not required if it was submitted by email. However, the instructions

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[57] Refer to footnote 28. As is the case for conventional consenting processes, there is nothing in the RMA that requires the EPA to accommodate submitters who change their mind and wish to be heard by a Board of Inquiry. S 149L(2)(b)(ii) has almost identical wording to s 101(3)(b).
[58] Including the Te Atatu and West Auckland Pony Clubs, the Metro Football Club and the Te Atatu Boating Club.
[59] Auckland Samoan Assembly of God Church.
[60] Including The Tree Council, the Pollen Island Care Group, the Mt Albert Residents Association (with Emeritus Professor Sir Harold Marshall KNZM), and St Francis School Board of Trustees.
[61] David Clendon, Gareth Hughes and Kevin Hague.

regarding signing the submission were contradictory, stating firstly that the submitter's signature was required, then that it wasn't required if the submission was being emailed, and finally that if a joint submission was being made then each individual's signature was required, all in the same paragraph (EPA, 2010d, p. 7).

The form included very detailed instructions about how to complete it, for example this note at the beginning of page 3:

> Please tick (✓) the relevant box(s) below to show whether you support the application in full or in part, or oppose the application in full or in part, or are neutral. Please note that you cannot both [sic] be neutral, support and oppose the application in full; however, you may be neutral to part of the application and/or support and/or oppose the application in part.

Submitters filled out their details (name and contact details) on page 1. On page 2 there was the following note:

> Privacy
>
> Your personal information provided on this cover page of this submission form will be held by the EPA… It will be used by the EPA as required for the administration of these notified resource consent and notice of requirement applications, and copies will be provided to the Board of Inquiry and the applicant and may also be provided to other parties to the process. *It will not be published on the EPA website*... The pages of the submission form following this cover sheet (including your name) and any attached information will be published on the EPA website… for use in the processing and consideration of the Waterview Connection application (emphasis added).

Despite this statement, the page containing personal information was not removed from at least four of the submissions (Te Atatu Boating Club, Auckland Samoan Assembly of God Church, Emeritus Professor Sir Harold Marshall KNZM and Mt Albert Residents Association, and the group submission from residents of Oakley Avenue[62]).

[62] This listed the names and addresses of fifty one individuals.

The origin of the other form used (an example of which is attached as Appendix I) is unclear; it also appears to have been designed to be completed electronically and emailed to the EPA. The form used a topic-based approach and submitters filled in tables under the headings of 'Provisions to which the submission relates are', 'My or our submission' and 'I/We seek the following relief'. The tables under the first heading included sections to describe the topic, and list the location or sector and consent numbers, as well as the specific provisions of concern. Following the tables, submitters were able to select statements regarding whether or not they wished to appear or be represented at the hearing; there did not seem to be any question regarding whether or not submitters might wish to make a joint case with others, or to call expert witnesses. Finally, there was a place to sign (with an instruction that a signature was not needed for email submissions) and write the submitter's name.

There also appears to have been a front sheet which was usually removed from the submissions prior to their being converted to PDF format. It included a table for the submitter's name and contact details, followed by a question regarding the submitter's preference for email or postal communication[63]. Some non-expert submitters also had this section left on their forms, but all (or all but the submitter's name) of the content had been blanked out; for example, both Stephen McCurdy and Robyn Mason, who used this form as a base for their submission, have these sections on the first page. It appears that in some cases it has been left on the document because the submitters had included a substantive part of their submission on that page rather than utilising just the topic-based tables.

Of the non-expert submitters, twenty three used the alternative form, two of whom added supplementary information. All but nine of the non-expert submitters used a form to make their submission.

A final point of note regarding the forms is that the post office box number given for the EPA was different on each form. At least one submitter, Steven Hart, noted this in the part of his submission that addressed his concerns regarding the consultation process.

[63] I discovered this section of the form existed because it was not removed from the submissions of two parties, Albert-Eden Local Board, and Heather and Rory Docherty for Friends of Oakley Creek, whom I had originally categorised as non-expert submitters who wished to be heard, but recategorised as expert as they were represented by legal counsel or experts at the hearing.

The submissions of the nine non-experts who did not use a form varied tremendously in sophistication and detail. Two (Michael Tritt and Ping Xu's submissions) consisted of a short email with identical wording. Others, such as Graeme Easte and Rob Black's, were more detailed; they focused on specific issues and sought particular relief for their concerns. It is also worth noting that a number of submitters included property plans, addresses or detailed descriptions of where they lived in the body of their submissions, and that these were not altered or removed by the EPA to ensure their privacy.

5.4.5 The submitters' views

The submissions from non-expert submitters covered a very wide range of concerns, predominantly social and environmental. These ranged from the impact on biodiversity, to the potential for flooding downstream from Oakley Creek, to access for recreational craft under bridges. Many of the topics were closely inter-related.

The topic raised most by the non-expert submitters was the on-going effects on air quality, with effects on communities (including social effects, effects on facilities, urban design and the cohesiveness of the affected communities) second. Many of the submissions that raised effects on communities commented specifically on the effect of the high number of properties to be taken (about 8.5 percent of households in Waterview (the Board, 2011a, p. 65, para. 197)). Also of concern to many non-expert submitters were the visual and noise effects (on-going rather than during the construction phase), effects on open space, community recreation facilities and the Motu Manawa Marine Reserve, and bicycle and pedestrian ways.

The other topic that was a focus of many of the non-experts was the northern ventilation building and exhaust stack; this particular issue demonstrates the tightly inter-woven nature of some of the issues raised. Most of the submitters were concerned by the proposed location of these structures in close proximity to Waterview School and Kindergarten, and their likely impact on the school roll as a result of the noise, air and visual effects[64]. Submitters perceived that this would have a significant social effect on the community. Others who opposed the location and design of these structures were concerned with the appropriateness of placing an industrial building

[64] Many non-expert submitters also recognised that the loss of a significant number of households in the suburb through the designation process would also impact on the roll.

with a twenty five metre high tower in a residential area and its impact on the amenity of the suburb; they also perceived that this would have significant social effects.

It is noteworthy that sixteen of the non-expert submitters commented on the limited timeframe available to make a submission (for example, Ora Emslie, Nicola Begg and John Parker for the Stella Maris Trust: "Process for submission to EPA too quick & complex for citizens to reasonably lodge protest"; Steven Hart: "The period for submission on the Project is disgracefully short contrary to good-faith treatment of affected communities and individuals"; and Leonie Hayes: "I did not feel there was satisfactory support given to residents to gain adequate information in the timeframe given") or the lack of detail available (for example, Paul and Kathryn Davie: "There are no detailed drawings for these buildings [i.e. the ventilation buildings] so no one can even visualise the impact these buildings will have"). Graeme Easte noted "Despite having been deeply involved with this project for many years, I am overwhelmed by the scale of documentation…" Marianne Riley also made the point in her submission that

> not all Waterview residents received the submission document package of information from the EPA. Communication of times that the Friend of the submitter were [sic] available in Waterview were miscommunicated [sic] by NZTA at an information evening in the Methodist Church in Waterview when in fact he was available on the 4th October.

This concern was not only raised by non-experts. For example, the Springleigh Residents Association's submission says "The hearings process requested by the applicant is of a nature that no person of an average education, average English skills and of sound financial circumstances can reasonably participate in. No person can reasonably read the application in the submission period."

5.4.6 Consultation and process facilitation

As was the case with the Cambridge Expressway and as noted in section 5.4.1, development of the Waterview Connection project, in particular the SH20 Waterview link, had begun in 1996. The Consultation section of the Assessment of Environmental Effects lodged with the application states that

> Extensive consultation has been undertaken with the community and stakeholders for the SH16 section of the Project (from 2007), the SH20 section of the Project (from 2000), and the combined SH16-20 Project (from 2010) (NZTA, 2010a, p. 10.11).

The Assessment of Environmental Effects relates the consultation objectives set for the two projects prior to their amalgamation. While they were different for each project both included objectives involving informing and learning from the community, and "taking into account community views, opinions, issues and concerns" or "endeavouring to meet stakeholder expectations" respectively (NZTA, 2010a, pp. 1-2). An extensive list of stakeholders was identified, and a local "geographic area of interest" (NZTA, 2010a, p. 11) was set for each project to consult with property owners and occupiers. Consultation material was then delivered on a local, district and regional basis, and a database set up; by the time the application was made, there were 5,700 addresses receiving material by mail and 1,200 by email (NZTA, 2010a, p. 12).

Consultation began early in the development of the project; initial phases, particularly for the SH20 scheme, were focused on developing a long list of twenty options for the route by identifying community values, impacts and constraints (NZTA, 2010a, pp. 20-22). There were widely divergent views expressed from the beginning; the Assessment of Environmental Effects lists general issues raised in one consultation phase, including "that there should be no motorway" and "that the Project should be built as soon as possible" (NZTA, 2010a, p. 21), for example.

It is clear that at least some of the information provided during consultation was incorporated into the development of the project. For example, following consultation on the constraints on the broad area where a route for SH20 was to be developed, three additional schools were added to the map (NZTA, 2010a, p. 22). It is also clear that a variety of methods were used by NZTA to consult with stakeholders and individuals affected by the proposals. It appears this extended beyond the application being lodged, although no evidence from the applicant was provided by the EPA about the process or results of that ongoing consultation[65]. The Report states, for example

> …NZTA applied considerable energy to working with the school board and Ministry, holding constructive discussions over quite a lengthy period of time.

[65] The request for documents to the EPA included any records of pre-hearings or meetings with submitters.

> This produced the result towards the end of our hearing, that an agreement was on the point of being signed… (The Board, 2011a, p. 342, para. 1340).

It appears this was encouraged by the Board; "continuing consultation amongst parties initiated by NZTA and others" is one of a list of processes that the Board states "we put in place… to narrow issues and focus on essentials to the greatest extent possible" (The Board, 2011a, p. , para. 86). The Section 42A report prepared for the Board on the EPA's behalf also references at least one example of on-going dialogue with a specific submitter[66], saying "We would expect the Board to be informed of consultation between the Applicant and the submitter to address these concerns during the course of the hearing" (Kivell & Thomas, 2011, p. [27], para. 3.7.4). It appears from references to these meetings that they were all with expert submitters (for example those discussed in The Board, 2011b, pp. 336-352, paras. 1309-1390; Kivell & Thomas, 2011, [p. 20], para. 3.3.26, p. [27], paras. 3.7.4 and 3.7.7)

The Board directed that some active steps be taken to facilitate the involvement of non-experts in the processing of the applications that are not common practice for consent authorities. Firstly, they arranged for the appointment of a 'Friend of Submitters', a consultant planner with no other involvement in the process than to assist submitters. Initially this appointment was "to assist potential submitters to understand the submission process", but this the Friend of Submitters was re-engaged to "assist with provision of advice on Board requirements for evidence exchange and grouping of parties with similar interests", including holding a series of "issue or geography-based submitter meetings" (The Board, 2010c, p. 2). The Friend of Submitters role was strictly to assist with the process; the Board reminded submitters that "The Friend will NOT provide any opinion on the content of evidence either voluntarily or if asked to do so" (2010c, p. 2).

Secondly, the Board "ordered a preliminary meeting amongst interested submitters and experts" (The Board, 2011b, p. 66, para. 202), a technique usually limited to experts and acknowledged as unusual by the Board (2011b, p. 37, para. 88). This is discussed in more detail in section 5.4.9 in the context of the topic addressed through the caucusing.

[66] Alex Wardle, categorised as an expert submitter.

5.4.7 The Board of Inquiry hearing

The Waterview Connection proposal was heard at the Environment Court building in central Auckland over sixteen days between 7 February and 25 March 2011 (The Board, 2010a). The Board comprised an Environment Court judge[67] and an Environment Court commissioner[68], and three other independent members including a resource management barrister[69], a civil engineer[70], and another engineer with expertise/experience in tikanga (Māori custom)[71] (EPA, 2010a, p. 2).

5.4.8 Selective analysis of the Waterview Connection proposal

As discussed in section 4.8, to be able to compare the Waterview Connection with the Cambridge Expressway proposal it is necessary to narrow the aspects of the proposal to be examined. I have chosen to focus the analysis of the Waterview Connection on the following areas as indicative examples of the Board's consideration of non-expert submissions:

i. Construction of a cycleway in Sector 8 and provision of alternative soccer fields, two of the issues considered within the overarching theme of open space and public reserves which had a very high level of non-expert interest and involvement (The Board, 2011a, p. 37, para. 88); and

ii. The Northern ventilation building and stack, because it is a single issue about which many of the non-experts who made submissions raised concerns for a range of reasons.

In addition, I have discussed one other non-expert who appeared, Matthew Tritt, whose submission is the first to be discussed in the report. This discussion gives insight into the way the Board viewed non-expert versus expert contributions to the hearing process. While the experience of some other non-expert submitters could have been recorded in this section, these experiences do not provide additional insights into non-expert contributions to the Waterview Connection Board of Inquiry process.

[67] Laurie Newhook.
[68] Ross Dunlop.
[69] Alan Dormer.
[70] Susan Jackson.
[71] Gerry Coates.

5.4.9 The experience of the non-expert submitters

As discussed in section 5.4.3, thirty eight of the submitters who appeared were identified as non-experts. By searching the PDF version of the Report it was possible to find where these submitters were mentioned by the Board, other than in the annex listing appearances. The decision specifically refers to the contribution of fifteen of these submitters[72] to some degree; this section focuses on the following non-experts whose representations form part of the consideration of material brought before the Board in relation to the topics discussed in this analysis:

- Michael Tritt
- Martin Roberts
- Sarah Woodfield
- Wilson Irons (for Metro Mt Albert Sports Club)
- Marianne Riley
- Leonie Hayes
- Rochelle Maclennan
- Graeme Easte

Michael Tritt made a brief, broadly-focused written submission opposing all the consent applications, by email (not utilising a submission form) at 4.55 pm on the final day of the submission period:

> …I do not believe this project should proceed. It will exacerbate car dependence, divert resources away from sustainable transport projects, and create a myriad of detrimental environmental, health and community effects.

The wording of his submission gave Mr Tritt the scope to introduce any matter that he could relate to these broad topics. While he does not mention the size and detail of the application, and limited time to submit as reasons for taking this approach, it is a way of ensuring the right to participate in the hearing process and gaining more time to prepare a more detailed and focused submission.

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[72] The non-expert submitters who are mentioned in the Report but not discussed here are L. Haines for The Tree Council, Dr Allan Woolf, the Chand family, Aaron Bridges, Robert Black, Te Atatu Pony Club, and West Auckland Pony Club.

The Report indicates that Mr Tritt's "oral representation… questioned the alleged benefits of the NZTA proposal and expressed a preference for a greater variety of transport options". The Board's response was that its powers "do not extend to enable us to question the designating authority's objectives, or even its choice of alternatives" (2011a, p. 61).

Mr Tritt and his 'representation' are later described as follows:

> a Hendon Avenue resident and former property owner claiming to have an interest in "transport issues" [who] presented us with a short statement of his views by way of representation (…not evidence that could be tested). He did not claim any expertise in traffic engineering or economics. He nevertheless attacked the assessed benefit: cost ratio calculations.
>
> Not only…did he not hold qualifications that would allow us to place some weight on his assertions, but neither did he question Mr Copeland [consulting economist]… or Mr Murray [transport engineer].
>
> We have no basis for doing other than holding that NZTA has provided us with reliable evidence from appropriately qualified experts… in answer to criticism by parties such as …Mr Tritt (The Board, 2011a, pp. 62-63, paras. 187-189).

It is important to note that the Board has differentiated between Mr Tritt's 'representation' and 'evidence'. This difference is described in its description of the Campaign for Better Transport's[73] submission in the Report:

> We note that the Campaign for Better Transport did not file any evidence of its own; it simply addressed representations to the Board through its agent Mr Pitches. So, no sworn evidence was offered, and in particular, the group's thinking was not put forward in a way that could be tested by cross examination by other parties (pp. 62, para. 184).

This differentiation is formally set out in a memorandum from the Board to all parties involved in the hearing process (the Board, 2010a). Evidence "(expert or non-expert) is statements made at the hearing that will tend to provide facts in issue, or facts from

[73] Campaign for Better Transport was categorised as expert for the purposes of this study because its membership includes experts in local government and transport planning.

which facts may be inferred" (p. 2). Representations are "essentially advocacy of their [submitters'] position" (p. 3) as set out in written submissions. It is consistent with the Environment Court's Practice Note section 5.3, *Evidence of an Expert Witness*, which sets out that expert evidence must state the witness's qualifications as an expert, describe the scope of the evidence to be given and "state either that the evidence is within the expert's area of expertise, or that the witness is relying on some other (identified) evidence" (Environment Court of New Zealand, 2011, p. 20). It is clear from the excerpt above from the Board's discussion of Mr Tritt's involvement that his representation was not considered to have any weight in comparison to the expert evidence on these matters.

Martin Roberts and Sarah Woodfield, two individual submitters, are mentioned as examples of submissions from "commuter cyclists", in the discussion of submissions that supported the evidence of Cycle Action Auckland[74]. This discussion is included in Section 7.5 of the Report, headed "Effects on Open Space and Public Reserves" (2011a, pp. 75-6, paras 240-243). Their concerns are listed as their safety during the construction phase during their commute, and strong support for a cycleway through Sector 8 of the project and, generally, alongside motorways (2011a, pp. 76, para. 243).

Both Ms Woodfield's and Mr Roberts' written submission had covered a number of other issues (including the effects of the reclamation, social effects on Waterview, the visual and air quality effects of the ventilation stacks, and loss of open space). Any submission they may have made on these other topics to the Board is not recorded or discussed in the Report.

As noted in section 5.4.6, the issue of whether an at-grade cycleway should be constructed was considered by the Board as part of the overarching issue of effects on open space and public reserves. This broader topic[75] was treated somewhat differently to the other issues; prior to expert caucusing, the Board arranged for some caucusing sessions that would include non-experts and experts, because they "felt it might be constructive for non-experts to inform the expert caucusing process, and for information and opinion to flow both ways" (The Board, 2011a, p. 37, para. 88). This was acknowledged by the Board to be an unusual step. Caucusing at appeals to the

[74] According to its submission, this advocacy group includes professional planners and transport planners in their membership. The Report states that it was represented by a transportation engineer and a professional planner (The Board, 2011a, p. 42, para. 106; p. 75, para. 240).
[75] Along with another broad topic, social issues (The Board, 2011a, p. 37, para. 88).

Environment Court is usually confined strictly to planning or technical experts (Environment Court of New Zealand, 2011, s 5.4, p. 21); its purpose is to narrow the issues in contention (New Zealand Planning Institute, n.d.n.d.).

The outcome of the non-expert caucusing session is not recorded, other the comment (under the heading 'Connectivity') that:

> The experts acknowledged that the non-expert session had discussed open space connectivity in terms of community cohesion and accessibility (i.e. transport) and indicated that connections were very important to them both during construction and in the long term (The Board, 2011a, p. 79, para. 258).

The Report records, however, that at expert caucusing it was agreed that a full north-south cycleway would be beneficial, there would be benefits to constructing the sector 7 to 9 section as early as possible, and that NZTA, Auckland Council and Auckland Transport would need to work together on the proposal. The experts could not agree that the full link was necessary as a mitigation for open space effects, as the NZTA experts considered "that there is no existing full link affected by the Project" (The Board, 2011a, p. 79, para. 259).

The impact Mr Roberts' and Ms Woodfield's submissions had on the decision with regard to the inclusion of the cycleway in Sector 8 can only be assessed in the context of the sum of evidence and submissions presented on the topic. Ultimately, NZTA was required to construct the cycleway through Social Condition SO14 (subject to certain other actions being completed by Auckland Council and Auckland Transport). However, it is clear that the Board's discussion of its reasons for this decision is predominantly focused on the expert and legal evidence it heard (The Board, 2011a, section 7.5.12, pp. 107-112), as is its record of the non-expert and expert caucusing discussed above. Thus, the representations of non-expert submitters can be seen as adding weight to the final outcome, rather than influencing the outcome in their own right.

Metro Mt Albert Sports Club, represented by Chair Wilson Irons and the Chief Executive of the Auckland Football Federation, David Parker, was also concerned with an open space issue: the loss and reduction in quality of recreational space and connectivity of open space. The Club's submission was that the proposed

temporary fields at Alan Wood Reserve[76], rather than at Phyllis Street Reserve as had been recommended to NZTA through the consultation process, would

> …not meet the needs of the Mt Albert football community... [W]hile the NZTA has tried to meet its requirements of providing replacement fields it has not considered the envornment [sic] or the needs of the community, football players and Mt. Albert children and parents[77].

The reasons for the Club's concerns about the Alan Wood proposal included their location (distant from the club and isolated), quality (soil base likely to be muddy in winter) and their proximity to the construction zone.

Mr Irons and Mr Parker supported improved facilities at Phyllis Reserve and a new two-field facility at Valonia Reserve in their representation to the Board. They saw a replacement field at Waterview Park following the completion of the works as having reduced value, as there would be reduced access to it. The proposed temporary field at Alan Wood Reserve would be unsatisfactory because it would be close to the construction zone.

The Board notes

> We were also struck by Mr Parker's evidence about football being "the first language" of many migrants, and about their enthusiastic use of areas of open space for informal games. This evidence corroborated that of others… (p. 77, para. 249)

The Report records that, at caucusing, the experts had acknowledged divergent community views and their own "considerable divergence of opinion" (The Board, 2011a. p. 83, para. 275). They did agree that, because sports fields are a regional resource, loss in one location can be mitigated in another. The Board, while they acknowledged this, were concerned with the quality of connectivity between the resources.

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[76] Gallagher's evidence on behalf of Auckland Council (2010, paras 7.2-7.3) states that NZTA proposes two half-sized fields with training lights and car park, one of which will have the tunnel service building constructed built on it within two to three years.
[77] Submission of Wilson Irons Chairman Metro FC.

Overall, the experts agreed that co-location of fields at Phyllis and Valonia Reserves was desirable, and that the decision should include relocation of the sports field, changing rooms and parking to Phyllis Reserve[78]. NZTA, however, had not applied for resource consent or designations in relation to Phyllis Reserve (The Board, 2011a, pp. 83-84, paras. 278-282), and there was debate about the layout of the proposed two fields at Valonia Street. An additional eight properties would need to be acquired to achieve the optimum layout, a matter outside the jurisdiction of the Board (The Board, 2011a, p. 84, paras. 284-285). It was agreed by the experts that provision of permanent fields rather than temporary replacements, including replacement fields at Valonia Street and the longer-term development of the Phyllis Street location, would be more acceptable to sports clubs. The NZTA proposal of a consent condition to either create a permanent field or make financial contributions to Auckland Council to develop a field elsewhere was noted at caucusing (The Board, 2011a, pp. 84-85, para. 287-288).

There is considerable discussion of the views of expert witnesses given as evidence and under cross-examination. The Board also discusses the difficulties in including consent conditions to provide for the proposed improvements where land must be acquired outside the existing notices of requirement. They conclude

> we have the impression that in quantitative terms, almost sufficient mitigation has eventually come about through offers of mitigation by NZTA and upgrading of draft conditions of consent during the hearing. A notable exception is probably that NZTA and the Council are prematurely optimistic (given their lack of committed resolve to date) about gaining the extra area at Valonia Reserve, and that should be discounted, and the proposed mitigation by sports fields there downgraded in qualitative and quantitative terms because of the want of space, and noise. In qualitative terms, the user experience of playing at fields at Alan Wood Reserve and Valonia Reserve, and at Waterview Reserve if the playing field is not shifted to Phyllis, will be significantly impacted during the construction works.

[78] The experts also agreed on the relocation of certain community facilities at Waterview Reserve (the toilet block, volleyball court, basketball court and children's playground are listed), and an increase in vegetation; there is no mention of the playing fields (The Board, 2011a, p. 83, para. 281). Most of the Waterview Reserve is to be taken over as construction yard, and ramps 2, 3 and 4 will all traverse it (NZTA, 2010e, p. 5.30).

> …Post construction, and despite the erection of barriers, there will be moderate to significant adverse effects, principally from noise, at Alan Wood and Valonia Reserves (2011a, pp. 115-16, paras. 411, 413).

There are several conditions that address the issue of playing fields, notably Open Space Conditions OS.5, OS.6, OS.9 and OS.10 (The Board, 2011b, pp. 60-65). These require:

- financial payments to Auckland Council in lieu of, and equivalent to, a playing field at Waterview Reserve, for the purpose of providing a playing field at Phyllis Reserve, as part of the Waterview Reserve Open Space Restoration Plan; and
- provision of three fields, possibly including two permanent fields at Valonia Reserve, or financial contribution in lieu to Auckland Council, at least twenty days prior to occupying the construction area.

As is the case for the cycleway through Sector 8, the contribution of the Club's non-expert submission and representation must be considered within the context of the expert evidence presented to the Board. It is clear that parts of the Club's representation, as part of the weight of community views on open space issues, added to the Board's view that qualitative rather than quantitative factors were most important in mitigating the effects on open space. However, the Board also makes it clear that the conditions imposed reflect mitigation offered by NZTA during the hearing, and that this mitigation does not effectively address the qualitative effects on the grounds during and after construction; despite this finding, and despite the lack of certainty regarding who will be responsible for ensuring the fields are constructed, consent was granted.

Leonie Hayes, Rochelle MacIennan, Marianne Riley and Graeme Easte were all individual non-expert submitters whose representations about the northern portal building and ventilation stack location, and its impact on the community, are specifically noted in the decision. The Report states "this issue proved to be among the more controversial in the case" (The Board, 2011a, p. 290, para. 1125), and indeed the discussion of the evidence presented and its influence on the consent conditions within the report is extensive.

In the application, NZTA proposed siting the northern ventilation building and twenty five metre high ventilation stack between Waterview School and Great North Road (on the western side of the road). There was little detailed design presented in the

application document; one of the drawings shows the extent of the building overlaid on an aerial photograph (Beca & NZTA, 2010) but there were no simulations to indicate how proposed plantings would mitigate the visual impact of the building, or how the stack would impact on views, for example.

Prior to the hearing, expert witnesses on landscape, visual and urban design matters had agree at caucusing on a number of mitigations for the ventilation building, including large scale plantings, re-establishing a residential area to the south of the building, redesigning the buildings to be more appropriate within a suburban context and minimising security fencing. They had agreed that the mass of the building should be broken up into three components, and that it would be preferable to reduce the height of the stack to fifteen metres and to redesign it as 'urban sculpture'. They also considered three alternative locations for the stack, all further away from the school; only one of these, on the eastern side of Great North Road and straddling the boundary of the Oakley Esplanade Reserve, came to be seen as a serious option during the course of the hearing (the Board, 2011a, pp. 304-305, paras. 1181-1186).

During the hearing, NZTA's own landscape witness, Stephen Brown, is reported as describing the effects of these structures as having "a major impact on both that residential catchment per se, and on the wider public perception of the suburb", and the effects of the temporary works as "significant", "very significant" and "major", including cumulative effects from the buildings in association with the interchange immediately north of them (The Board, 2011a, p. 291, paras. 1126-1129). While Mr Brown acknowledged the

> strong community views in favour of moving the stack to the eastern side of Great North Road, but nevertheless continued to offer his own professional judgment to the contrary. …he did however agree that the local community might be entitled to have greater weight accorded to their interests than those of commuters on the Great North Road (The Board, 2011a, p. 294, paras. 1138-1139).

The Report discusses the representations made by local residents. Ms Hayes, who lived three doors away from the proposed site, talked about the visual impact of the stack, which the Board described as "looming" over her home and into her view

(2011a, p. 299, paras. 1159-1161)[79]. Ms Maclennan, who lived about three blocks away, was concerned about the impact on Waterview School and what people's perceptions about Waterview would become. She is quoted as saying "you've all heard before if you put lipstick on a pig, it is still a pig" in the context of changing the design of the stack[80]. Ms Riley's representation about the likely public perception of the stack is also discussed; the report makes a point of noting that Ms Riley is an architect[81].

The Board also records the views of Mr Easte[82], who made a submission on his own behalf as well as being involved in the proceedings with representation by experts and advocates by virtue of being an elected member of the Albert-Eden Local Board. The Report notes that he

> recommended an artistic and design approach akin to the work of noted local sculptor Virginia King, who with technical experts had designed the Rewarewa Bridge at New Lynn. While unable to accept much of what Mr Easte submitted, we find that that particular idea has some intrigue (2011a, p. 300, para. 1166).

Comments made elsewhere[83] by the Board on Mr Easte's participation give further insight into the weight they gave his submission and evidence:

> Mr Easte was adamantly opposed to a lot of things, but was not called as a professional witness either in planning or design of transport infrastructure, or anything else. Indeed, he introduced his evidence by recording that he was not

[79] Ms Hayes' submission covered a range of issues affecting Sectors 5 and 7 (i.e. Waterview), under the headings of 'community and school', consulting document', 'exit and entry to SH20 at the interchange' and 'mitigation'; however, the Report only mentions her concerns in the context of the northern ventilation stack.

[80] Ms Maclennan submitted jointly with Brett Maclennan; their written submission was also concerned with the loss of open space and connectivity in Waterview.

[81] The same note is made in the context of Ms Riley's submission about mitigating effects on open space and reserves (The Board, 2011a, p. 113, para. 406). Ms Riley's written submission opposed all the designations and resource consent applications, and was more specifically concerned with the project's effects on Waterview and Owairaka/New Windsor.

[82] Mr Easte's submission was made "to seek to make the best of an unsatisfactory situation" and, in addition to the northern ventilation building and stack location and design, focused on early mitigation: for example replacement sportsfields, the southern ventilation building and stack, the shared path for cyclists and pedestrians, St Lukes interchange, open space effects and quiet road surfaces. His representation is also discussed at p. 55, para. 147 of the Report (The Board, 2011a).

[83] In relation to Mr Easte's comments on the Draft Decision, about the location of the southern ventilation buildings and stack.

> offering expert evidence[84]. He is a local body politician (2011a, p. 335, para. 1306).

In response to the "high level of dismay, even anger, from people in the local and wider vicinities" (The Board, 2011a, p. 292, para. 1130), NZTA prepared a revised design and offered to include this part of the project in the Outline Plan of Works (OPW)[85]. Their experts continued to support the location of the stack on the western side of the road; there appears to have been considerable evidence presented about the additional cost of shifting it to the eastern side and the level of consideration the Board should give to this factor. In response the Board said:

> It is our task to weigh all relevant matters and come to a result that serves the purpose of the Act. Affordability or value for money would not be a game breaker, but should be placed in the mix as one of many relevant factors (2011a, p. 315, para. 1218).

They decided that

> we hold that mitigation should be undertaken in the form of moving the northern stack [to the eastern side of Great North Road]… We find that the imposition of this stack on the Waterview community in the position originally proposed, whether at a height of 25m, or of 15m..., would have very severe adverse visual effects for nearby residents, at least out to the distance that Ms Hayes' property would be (2011a, p. 315, para. 1219).

The preparation of an OPW for the ventilation stack was incorporated into the 'general designation conditions' (DC). DC.7 requires the preparation of the OPW for both the northern and southern ventilation buildings and stacks, and DC.8 sets out nineteen requirements to be included in the design of the northern structures. These requirements include that the stack shall be fifteen metres high, and be located within a specified area on the eastern side of Great North Road; "the precise location within the OPW area shall be a matter of consultation with the Community Liaison Group(s)…"

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[84] Mr Easte presented written information to supplement his submission prior to the hearing, regarding the location and design of the northern ventilation building, in which he states "I am not providing any Expert Evidence…" (Easte, 2010, p. 1). This was provided to the Board as 'submitter evidence' according the file name of the scanned document provided by the EPA.

[85] The OPW is a means provided through the RMA provisions on designations (specifically s 176A) to allow the local territorial authority to request changes to the design of structures before construction begins.

(The Board, 2011b, p. 5, condition DC.8(c); see also p. 10, figure DC.A). Condition DC.8(e) requires the

> development of an architectural profile, detailing and material palette that references the local landscape / geology / coastline / residential area in the design of the above-ground ventilation buildings and for the ventilation stack to avoid an industrial character.

There is no mention here, or anywhere in the Report other than in paragraph 1166, of Mr Easte's suggestion that Virginia King be involved in the design that the Board had found 'intriguing', and Public Information (PI) Condition PI.5, which requires the establishment of Community Liaison Group(s) does not make specific or general reference to including any designer (The Board, 2011b, p. 25). It would be against the principles of consent conditions for such a condition to be included, as it would not be "Exclusively between the consent holder and consent authority… [and would] require the agreement or compliance of third parties" (Ministry for the Environment, New Zealand Planning Institute, Local Government New Zealand, Resource Management Law Association, & New Zealand Institute of Surveyors, 2012, p. 4)[86].

As in the previous two examples, the influence of the four non-expert submitters on the final decision must be considered within the context of the sum of expert and non-expert opinions, and evidence about the northern ventilation building and stack and their location. It is clear that the Board took into account the views and wishes of the local residents on this matter and that, as a body of submissions and expert evidence, these views and wishes resulted in the moving of the stack away from the school. This has been referred to as an "upset victory" for the "little people" by one journalist (Orsman, 2012, n.p.). The non-expert submissions of Ms Hayes, Ms Maclennan and Ms Riley may have influenced the Board's decision as individuals; indeed, it seems that Ms Hayes' simulations of the visual effect of the tower at her home influenced the outcome to such a degree that NZTA challenged its inclusion in the discussion through their comments on the draft Report (The Board, 2011a, p. 299, para. 1160). It is also clear, however that the discussion in the Report is using them as examples of residents at particular locations in relation to the stack, to illustrate degrees of effect; for example, in response to NZTA's comment the Board stated:

[86] It could be argued that some conditions that were included, such as those requiring the establishment of Community Liaison Groups, require third party co-operation and are therefore contrary to this principle.

> The point is taken, but from Buildmedia's presentation of the corrected view of the stack from the school grounds, it is self-evident that a person living three doors for the then-proposed position of the stack… would have it looming into their view. NZTA should remember that the members of the Board also visited the locality and gained a good feel for the scale of buildings and vegetation there (2011a, p. 299, para. 1160).

Sixteen of the thirty eight non-expert submitters who appeared at the hearing had raised concerns about the northern ventilation building and/or stack in their written submission; it seems very likely that there were many more representations to the Board about this matter than the four that the Report discusses. This supports the conclusion that these submissions were examples used by the Board to show the reasons behind their decisions about these structures.

Applications which have been decided by a board of inquiry can be appealed. However, while this is available to submitters, it can only be made to the High Court, on a point of law (s 149R).

5.4.10 Lessons Learned

NZTA commissioned two reviews of the Waterview Connection project process, called 'lessons learned' reviews. These reviews provide some valuable contextual information about the conduct of the Waterview Connection process specifically, and national consenting processes generally from the perspective of an applicant.

The first of the reviews focused on the period up to the lodgement of the application with the EPA, and involved interviewing NZTA staff and consultants involved in the project (van Voorthuysen, 2010). Two matters discussed in this review are relevant: the friend of submitters and level of design detail.

Van Voorthuysen found that

> NZTA has, despite some reservations[87], agreed to the EPA suggestion of having a "friend of the submitter". It is understood that the "friend of the submitter assists potential submitters to decide whether or not they should lodge submissions and if so, what range of concerns fairly falls within the scope

[87] These reservations are not described in the review document.

> of the applications and their effects. This is obviously an important role as, depending on the approach of the "friend", submission could either be encouraged or discouraged. In that regard it is crucial that NZTA have a say in who the "friend" is and it would not be unreasonable for NZTA to request a right of "veto" over particular individuals (2010, p. 6).

He notes that "In this case EPA have appointed Brian Putt although initially they thought a planning graduate with two to three years [sic] experience might be suitable" (p. 6). The Board noted that it "took the step of arranging for the EPA to appoint an Auckland-based senior resource management practitioner" and acknowledges Mr Putt's contribution to the "orderly progress of our inquiry" (2011a, p. 9, para. 12).

The review also notes that the level of design detail undertaken by NZTA for the Waterview Connection application "greatly exceeded that normally undertaken for NZTA projects" and "that NZTA had locked itself into a level of design detail that would prove incapable of providing the flexibility required for a consenting process – namely being able to cope with changes to project design or mitigation measures occassioned [sic] by the outcome of the hearing process" (van Voorthuysen, 2010, p. 9). This perception provides valuable context to the discussion in the Report around, for example, the northern ventilation buildings and tower. NZTA's senior project manager stated that moving to the preferred alternative location on the east of Great North Road would add $22.5 million to the cost of the project, although it is clear this involves more than just design (The Board, 2011a, p. 311, para. 1201). Some submitters raised lack of detail in the designs as an issue. Rory and Heather Docherty's submission[88], for example, stated that "There is insufficient detail in the proposed structures, such as the ventilation buildings and stacks, to make an adequate assessment of their effects on the environment" and requested that buildings and structures be subject to a separate consent process once the detail was established. Rob Black's submission sought the following outcome:

> That the building design details be presented prior to the hearing commencing. The presentation of an Outline Plan outside the Application and Consent process is not acceptable. *The design must be publicly notified with opportunity for those affected to respond* (emphasis added).

[88] On behalf of Friends of Oakley Creek – Te Auaunga.

The second review (Grounds, 2011) covered the period between May and September 2011. An online survey was sent to people who had been involved in the consenting process, including NZTA staff and legal, planning and technical advisors. Interviews were also conducted with those respondents who requested them; their purpose was to discuss any matter in more depth. This review discussed the following findings of relevance to submitter involvement in the national consenting process:

- Potential development of practice guidelines or changes to the RMA, to improve national consenting processes. The report lists a topic to be raised with the EPA or Ministry for the Environment under this heading as "Guidance on the role of expert opinion vs submissions and representations from members of the public and submitter groups" (p. 15). The discussion of Mr Tritt's and Mr Easte's involvement in the hearing, discussed in section 5.4.9, supports a view that these distinctions were not always well understood by non-expert submitters.
- The timing of reports commissioned from affected local authorities by the EPA. Some respondents felt that requiring this report to be finalised and released before submissions closed meant that it "did not take into consideration some key submissions… [and] some submitters were confused as some key matters were not specifically raised or addressed in the report" (p. 16). The review recommended that this issue be raised and discussed with the EPA and local authorities.
- Inclusion of 'the public' at witness caucusing. This was likely to refer only to the sessions on social and open space issues, held prior to expert caucusing, that involved non-experts (The Board, 2011a, p. 37, para. 88). The review recommended that "the possibility of removing the public from discussions at Witness Caucusing is discussed, to ensure it remains focussed on expert witness caucusing and not evolve into another round of public/community consultation" (Grounds, 2011, p. 19).
- Negotiations with submitters. Respondents considered that this was challenging, but "generally a positive and constructive process" (p. 20). The review made two recommendations: produce more 'educational' material to provide non-experts with better context and background about the project and its environmental effects, and engage earlier with submitters' concerns and include them in the assessment of environmental effects, with a view to reducing the number and size of submissions.

5.5 Conclusion

This chapter has analysed the experience of non-expert submitters in the two cases that are the focus of this research: the Cambridge Expressway proposal which was processed jointly by the three local consenting authorities, and the Waterview Connection which was decided by a board of inquiry. Although both applications were made by NZTA for roading infrastructure projects, the analysis reveals that the extent of non-expert submitters' involvement in, and effect on, the decision varied enormously. This variation was due to range of factors that include the differences in process, the size of the projects and the approach to consultation.

In the next chapter these findings are discussed and a comparison made of the two cases. This chapter will discuss these results in the context of the review of literature discussed in Chapter 3.

6. Discussion

6.1 Introduction

This chapter discusses the main findings of the comparison of the two cases. These findings indicate the differences that occurred in non-expert submitter participation as a result of the type of decision-making process that was carried out. The discussion is structured around key phases and documents associated with the processes: submission-making, consultation and engagement, and the hearing and decision. It also considers the findings in the context of the literature discussed in Chapter 3.

Four key themes have emerged from the analysis of the cases that highlight the influence of the process on non-experts' ability to participate in, and influence, the decision-making for the Cambridge Expressway and Waterview Connection proposals. They are:

i. the volume of material and the challenges associated with accessing and utilising it effectively in the submission-making process;

ii. the impact of the nine month processing timeframe for a board of inquiry process;

iii. the relative weight given by the decision-makers to different types of information presented to them; and

iv. the formality of the hearing process.

These themes will be examined within the following discussion of non-submitter participation at different stages of the processes.

6.2 Comparing the Cambridge Expressway and Waterview Connection

Despite differences in size and complexity of the Cambridge Expressway and Waterview Connection processes, both of these applications were for roading infrastructure projects that were classified as 'roads of national significance', announced by the Minister of Transport in 2009 (see section 5.2.1). The NZTA was the

applicant and requiring authority in both cases, and the activities were regulated by resource management plans from three councils (two territorial authorities and a regional authority)[89].

While both projects had been proposed well in advance of the applications being made, there were significant differences between the Cambridge Expressway, which was first designated in 1973, and the State Highway (SH) 20 and SH16 projects which were proposed in 1996 and 2007 respectively. The Waterview Connection will be constructed through urban areas, parts of which are long-established residential suburbs, reserves (including the Mana Motu Marine Reserve) and recreational areas. In contrast, the Cambridge Expressway will be constructed predominantly through a rural landscape (NZTA, 2010h). While the Cambridge Expressway will divert traffic out of the Cambridge urban area, the Waterview Connection will bring a major new road, associated infrastructure and an increase in traffic into the affected suburbs. The number of residents and landowners directly affected by the two proposals differs greatly. In addition, the Waterview Connection proposal will affect users of reserves and open spaces which introduced an even wider catchment for potential submitters.

Each of the nine geographic sectors that the Waterview Connection proposal was divided into had, arguably, the scale and complexity of the entire Cambridge Expressway proposal. Some sectors involve challenging design issues such as extending the causeway in the Waitemata Harbour or construction of tunnels, and with these came a broad range of undisputed or potential environmental effects.

However, in spite of the significant differences between the two proposals, they were both approved using processes set out in the RMA, which requires decision-makers to promote the management of "the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety" (s 5(2)). Both processes provide the means for *any person*[90] to make a submission on an application that is publicly notified and to be heard in support of their submission (s 96(2) and s 149E(1)).

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[89] The application for Waterview Connection was lodged with the EPA in August 2010, before the creation of the single Auckland Council in November 2010, and involved land and activities under the jurisdiction of the then Auckland and Waitakere City Councils and Auckland Regional Council (Board of Inquiry into the New Zealand Transport Agency Waterview Connection Proposal, 2011b) .

[90] Except a trade competitor (s 96(2)).

The submissions on each of the proposals were heard, and the decisions made, by a single, independent body. The Cambridge Expressway hearing panel comprised four independent commissioners, one appointed by Waipa[91] and Waikato District Councils to chair the panel and make recommendations on the notices of requirement, and three appointed by Waikato Regional Council[92] to decide the resource consent applications. The Waterview Connection application was heard, and the recommendations and decisions made, by a board of inquiry appointed by the Minister for the Environment and Minister of Conservation, and included an Environment Court judge[93], as required by section 149J(3)(b), an Environment Court commissioner[94] and three other independent members including a resource management barrister[95], a civil engineer[96], and another engineer with expertise/experience in tikanga (Māori custom)[97] (EPA, 2010a, p. 2). As is noted in the Board of Inquiry into the New Zealand Transport Agency Waterview Connection Proposal's (the Board) final report ((the Report); 2011b, p. 7, para. 9), the Board had the same powers, rights and discretions as a consent authority would have, which they exercised as though the proposal were an application for resource consent (s 92-92B, and 99-100). Notwithstanding these clauses, the conduct of a board of inquiry is predominantly influenced by procedures followed in the Environment Court. A board of inquiry's approach to hearing applications, therefore, will inevitably reflect the approach of the Court and the power of the judge who chairs the board to determine how the process will unfold, and how formal it will be[98].

6.3 Making a submission

As outlined above, both the Cambridge Expressway and Waterview Connection proposals involved aspects that were regulated by more than one district plan, and a regional plan. For the Cambridge Expressway proposal NZTA lodged their applications with all three councils, while they lodged their application for Waterview Connection directly to the EPA, requesting that the proposal be called in.

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[91] Alan Withy.
[92] Craig Shearer, Karyn Sinclair and Maree Pene.
[93] Laurie Newhook.
[94] Ross Dunlop.
[95] Alan Dormer.
[96] Susan Jackson.
[97] Gerry Coates.
[98] This point was made by Mike Foster, who had been present at more than one board of inquiry proceedings, and Grant Eccles, consultant to the EPA for the Tauhara II Board of Inquiry, during question time following the delivery of two papers at a session on the EPA on 30 March 2011 at the New Zealand Planning Institute Conference in Wellington. Sarah Gardner, Manager, Consenting for the EPA noted that the EPA was working with the judges to try and build consistency (P. Tucker, notes, March 30, 2011).

6.3.1 Application documentation

The application documentation was commensurate with the scale of each of these two proposals. As could be expected given the extent and complexity of the Waterview Connection project, the application was similarly large and complex. According to Cronwright, Linzey and Vince (two consultants for and one employee of NZTA who were closely involved in the Waterview Connection national consenting process (2011)), the time constraints imposed by the nine month timeframe for the national consenting process place an onus on the applicant to prepare more extensive and detailed information. NZTA held pre-application discussions with the EPA, to agree the scope of matters that would need to be addressed in the application and to avoid delays that would arise from presenting an incomplete application[99]. The EPA is also responsible for commissioning reports, after the application has been lodged, to assess the information provided in the application. However, these reports may or may not be prepared by the same person or persons from the EPA who were involved in assessing the application for completeness before it was accepted and lodged. As a result, the person preparing the s 42A reports may raise different issues. Cronwright et al. note that:

> What this has meant for the Waterview Connection Project, is that a precautionary approach has been taken and a lot of detail has been provided by the NZTA to ensure the adequacy of the lodgement documentation and that the full scope of issues have been covered (2011, n.p.).

They stated that a comprehensive range of planning and technical evidence had to be prepared and available prior to the application being lodged, and experts were on hand in case they were required during the hearing, as there would be no time to prepare additional material during the proceedings. Consultant planner Grant Eccles, who was contracted by the EPA to prepare the planning report for the Tauhara II Board of Inquiry (Board of Inquiry into the Tauhara II Geothermal Development Project, 2010p. 25, para. 78) and presented the conference paper on that process discussed in section 3.2 (Eccles et al., 2011), made the same point during the presentation: applicants "need to bring their end game" when lodging (P. Tucker, notes, March 30, 2011). Cronwright et al. estimated that, in reality, only approximately half the experts were cross examined or questioned by the Board (P. Tucker, notes, 30 March, 2011).

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[99] The pre-lodgement phase was about 9 months (P. Tucker, notes, March 30, 2011).

Parts of the Waterview Connection proposal, however, such as the designs of the ventilation towers and buildings (Beca & NZTA, 2010), were not presented in their final format and were to be finalised "during the subsequent detailed design phase of the project" (Cronwright et al., 2011, n.p.), after consent had been granted. This lack of design detail for parts of the project which were particularly controversial, such as the northern ventilation buildings and tower, was criticised by some submitters (as discussed in section 5.4.9).

Submitters had to deal with thirty four volumes of application material (including the assessment of environmental effects and supporting technical appendices) prior to making their submission, and all those who wished to be heard were served with thirty seven volumes of evidence in chief, thirty three volumes of rebuttal evidence and six volumes of supplementary evidence. The use of technology to provide this information was seen as a very important way of delivering so many, often very large, documents within the tight timeframes (Cronwright et al., 2011). While the value of electronic delivery of information has been highlighted by applicants and the EPA (Cronwright et al., 2011; Eccles et al., 2011), there is no data available on how submitters view its use.

As discussed in section 2.6, the timeframe for the Waterview Connection decision to be notified was nine calendar months from notification of the ministerial call-in, which included the Christmas and New Year period. The statutory holiday period had previously been excluded from consent processing time limits and its inclusion further restricted the amount of time actually available to conduct the process. This precluded an extension to the submission period. Sixteen of the non-expert submitters[100] referred to the difficulty in making a submission due to the volume and complexity of the information in the application, or the lack of detailed design information (see section 5.4.5); this criticism was not only made by non-experts[101].

These factors constrained submitters' ability to access the information they needed in order to effectively participate in the Waterview Connection process. They impacted, as a result, on the fundamental principles of public participation in resource management processes that have underpinned the RMA since its inception.

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[100] Unless otherwise stated, all references to submitters on the Waterview Connection proposal is a reference to the group of 101 non-expert submitters who either indicated that they wished to be heard or were heard (refer to section 5.4.3 above).
[101] For example, the Springleigh Residents Association.

In contrast, there was no evidence that non-expert submitters to the Cambridge Expressway proposal found that the size of the application was a barrier to their making a submission. It is clear that some of these submitters[102] did not understand the extent of the Hearing Panel's jurisdiction and attempted to use the process to resolve concerns that did not form part of the proposal; in both cases submitters raised issues around property values and ownership that could not be addressed through the resource management decision-making process. In summary, the data highlighted that the volume of material associated with the Waterview Connection application and board of inquiry process was recognised as a barrier to participation by submitters, NZTA and commentators alike.

Despite the volume of material, critical information was not available to submitters on the Waterview Connection proposal. The lack of detail in the application for some parts of the design was perceived to be an issue for some submitters. Coupled with the extensive application documentation, this made it difficult for non-experts to understand what was being proposed in the application and how it might affect them. When combined with a limited timeframe to make a submission (when time is recognised as a resource that is a constraint against participating in resource management processes for many (including, as discussed in section 3.3.2, Parliamentary Commissioner for the Environment, 1996; Stephenson & Lawson, 2013), the Waterview Connection application was demonstrably significantly more difficult for non-experts to make a submission to than the Cambridge Expressway proposal.

6.3.2 Submission forms

In both consent processes there were at least two submission forms made available for the submitters to fill out[103]. All forms were based on Form 13 (Resource Management (Forms, Fees, and Procedure) Regulations 2003) but differed in design, order and instructions on filling out the form and the method of submission.

For the Cambridge Expressway, forms were provided by Waipa District and Waikato Regional Councils[104] which were partially completed with details of the proposals. As is discussed in section 5.3.4, the sections that had to be filled out were similar, but the order of question and instructions were different. In particular, the Waikato Regional

[102] For example Owen Haskell, as discussed in section 5.3.8.
[103] Sections 5.3.4 and 5.4.4 describe the forms and their use by submitters in depth.
[104] The Cambridge Expressway submission forms are attached as Appendices C and D.

Council form did not instruct submitters that all sections had to be completed and did not mention submitting electronically, while the Waipa District Council form noted that signatures were not required if submissions were made electronically. Neither form noted that additional material could be appended, which may have led some submitters to believe they were required to contain their submissions within the small spaces provided.

Eighteen of the nineteen non-expert submitters to the Cambridge Expressway made use of forms to make their submissions, fifteen of whom used the form alone. Some of these fifteen wrote only a few words on the forms. One did not include any reasons for his support or the decision sought from the hearing panel. Most of those who submitted to more than one council made identical submissions to both.

In the case of the Waterview Connection process, which was managed by the EPA exclusively, submissions had to be made to one organisation only, and only one form needed to be filled out. The EPA provided a form which could be filled in electronically, and encouraged submitters to use email. However, there was a second form that did not originate from the EPA which differed quite considerably in its design[105]. The address for the EPA, where the submission could be mailed to, had different private bag numbers on the two forms.

Several factors about the EPA submission form are noteworthy. Firstly, its length (eight pages) and the small font size (8.5 point) may have been a barrier to some potential submitters. Nearly four pages were taken up by a table which listed each part of the application (by application number and a brief description). Submitters were asked to use this table to specify which parts of the proposal they were interested in and their position, with very detailed instructions that opposing or supporting the application in full precluded them from having a different position in relation to part of it. There were also contradictory instructions about whether the submission form had to be signed, and by whom. It is important to note that making a submission is a legal process where getting something as fundamental as filling a form in correctly can mean the difference between having the right to participate or not. Unclear or ambiguous instructions potentially create a barrier to participation, particularly where potential

[105] See section 5.4.4 for the detailed analysis of the differences between the two forms, and Appendices D and E for copies of these submission forms. The origin of the alternative form is unclear; neither the EPA nor NZTA knew who had made it available but the EPA suggested it may have been a submitter (S. Bevin, personal communication, July 11, 2013) and NZTA a community group (D. Rama, July 15, 2013).

submitters are unfamiliar with RMA processes, as described by the Parliamentary Commissioner for the Environment (1996) and Gunder & Mouat (2002), discussed in section 3.3.2.

It appears that parts of the EPA submission form were designed with a view to streamlining the processing of submissions, rather than making it as simple as possible for submitters to fill out. The form does, however, include the EPA's free-phone number and email address if submitters wish to find out how to contact the Friend of Submitters for assistance in filling it out, although not information on how to contact him directly. The public notice indicates that submissions opened (and therefore the form designed and made available) before the Friend of Submitters had been appointed (EPA, 2010c).

All but nine of the non-expert submitters used one of these forms, and only eighteen added supplementary material. It is clear from the high proportion of non-experts who made use of pre-prepared forms to make their submission that making a form available is an important means of providing access to the resource management decision-making process. The design and the clarity of the instructions on forms is therefore important, especially where there is more than one organisation involved and submitters may need to fill out more than one form. There was a lack of consistency between the forms used in both processes, and even within the instructions on the same form, that may have deterred caused confusion for submitters (or deterred potential submitters from participating). The forms were not completed in full by all the non-experts who submitted, and in some cases they appear to have been confused by what they were being asked to do; for example, the EPA form included a note that the option to make a joint case was only available to submitters who wished to be heard (EPA, 2010d, p. 6), but as discussed in section 5.4.4 some non-experts who did not wish to be heard ticked it anyway. It does appear, however, that the EPA and the local authorities were tolerant of errors in completing submission forms; a clear example is that there were submitters to both processes who had either stated on their submissions that they did not wish to be heard or had not indicated whether they did or not, but did subsequently appear at the hearings.

It could be argued that there were fewer barriers to making a submission on the Waterview Connection proposal than to the Cambridge Expressway, as there was a single agency processing the applications and assistance was made available by the Friend of Submitters. However, the sheer volume of the material, the size, appearance

and complexity of the EPA pre-prepared submission form, as well as the inconsistencies between the EPA form and the other form that was used, potentially affected submitters' understanding of the process and their opportunity to be involved.

One aspect of the submissions that was very different between Cambridge Expressway and Waterview Connection was the treatment of personal information (discussed in section 5.4.4). The EPA, on its submission form, undertook not to post the contact details of the submitters on the website, and to only provide them to the Board of Inquiry, the applicant and possibly other parties. This meant that submitters did not have easy access to this information to find out how to contact others with similar interests in the proposal if they wished to make a joint case, which is counter to the Board of Inquiry's desire "to encourage parties with similar interests to work together and/or prepare joint presentations in the interests of the quality of their cases, and the quality of process" (The Board, 2010c, p. 2). The privacy statement on the EPA submission form did not guarantee that these details were always removed from the publicly available copy of the submissions[106], as discussed in section 5.4.4. In addition, some of the submissions included information, such as property plans, about the location of the submitters' homes that clearly showed where they lived. The Report also included the name and full home address of at least one submitter, and the street two others lived in, to provide context in its discussion of visual effects of the northern ventilation tower (see section 5.4.9).

The privacy statement may have provided encouragement to some interested parties who were wary of engaging in the process, but its inclusion did not guarantee that their personal information was kept out of the public domain and may have hindered submitters' ability to make a joint case. Its place within the process appears ineffective and unhelpful.

In conclusion, many factors are likely to have have deterred lay people from making a submission, in particular the appearance and content (especially instructions on how to fill them in correctly) of submission forms.

[106] Four of the submissions examined had the contact information page left on the scanned submission document, and a further two submissions on the alternative form that included a contact information page.

6.4 Consultation / engagement

As previously discussed[107], both the Cambridge Expressway and Waterview Connection had extensive consultation processes prior to the applications for the proposals being lodged. In the context of the International Association for Public Participation (IAP2) public participation spectrum (2004), discussed in section 3.3.1, these processes largely reflect the 'inform' and 'consult' phases of the spectrum, although they include 'involve' during the early stages of the projects that were to become the Waterview Connection proposal, prior to the development of alternatives.

NZTA utilises the IAP2 spectrum and core values. Its public engagement and consultation guidelines (1998; still with 'working draft' status) state that it "supports the principles and approaches to public engagement promoted by the International Association for Public Participation" (p. 4). The principles for engagement for the Waterview Connection process set out by Linzey, Masefield and Hopkins (2013), consultants for NZTA, reflect five of the seven IAP core values. However, some submitters specifically criticised NZTA's fulfilment of its commitment to these values. In particular, they perceived that "NZTA have not ensured that the public's contribution will influence the decision. They have not promoted sustainable decisions by recognising and communicating the needs and interests of all participants, including decision makers"[108].

The findings of the second 'lessons learnt' review of the Waterview Connection process, commissioned by NZTA and discussed in section 5.4.10, suggests that NZTA considers that increased effort in the 'inform' and 'consult' aspects of the spectrum, by developing "more 'educational' material,… which is aimed at the lay person to provide greater context / background to the project and it's [sic] associated environmental effects" and "earlier engagement and inclusion of concerns from submitters into the environmental assessment(s) which may… [reduce] the number and size of submissions" (Grounds, 2011, p. 20) could reduce the level of public participation and the effort required at other stages of the spectrum.

In relation to the opportunities for consultation with non-expert submitters that were available during the processing of the applications, the difference in this aspect of the two cases is marked, largely because of differences in scale. For the Cambridge

[107] In sections 5.3.6 and 5.4.6.
[108] Submissions of Eric Guttenbeil, Rob Black and Kim Ace, for example.

Expressway proposal, NZTA continued to meet with individual submitters before the hearing as discussed in section 5.3.6. These meetings were documented in the evidence on consultation provided to the hearing panel on behalf of the NZTA (Moore, 2011) and were with those submitters who opposed the application, both expert and non-expert. This was possible largely because the number of submitters was quite small and their issues were, in general, quite specific, and there was sufficient time available to be able to undertake these meetings because the processing time limits for conventional consenting processes include an element of flexibility. There were no pre-hearing meetings for submitters facilitated by the consenting authority, however the applicant's approach provided an opportunity for each submitter to meet with NZTA and endeavour to narrow the issues to be brought to the hearing panel for resolution. The approach extended as far as the 'collaborate' stage of the IAP2 public participation spectrum, for example in working with Owen Haskell to design the realigned property access ways as closely as possible to his preferences.

In the case of the Waterview Connection application, it is clear from the decision that NZTA met with some submitters prior to and during the hearing. However, it appears their efforts were focused on individual, expert submitters who had specific issues with whom they could negotiate an agreed way forward, as discussed in section 5.4.6.

The EPA initiated interaction with potential submitters at the direction of the Board, all within the 'inform' stage of the IAP2 public participation spectrum. There was at least one community meeting, and a series of ten public sessions where the Friend of Submitters was available to advise and assist potential submitters (EPA, 2010e). This was all focused on the process and how to participate, not the proposal and its effects; that is, how to make a submission, not what its substantive content should be.

The Board also directed that the Friend of Submitters be reappointed to assist submitters to prepare for the hearing, including preparing joint presentations. There were four walk-in sessions scheduled initially, and the potential for further issue based sessions to be arranged. Again, this was about facilitating the process; submitters were explicitly informed that "The Friend will NOT provide any opinion on the content of evidence either voluntarily or if asked to do so" (The Board, 2010c, p. 2). However, as discussed in section 3.2, the Friend of the Submitter role can include assisting

submitters on how to resource themselves[109]. This aspect of preparing to participate is what can transform an individual or a group of non-expert submitters into expert submitters, by providing them with the means to access technical and legal advice.

The role of the Friend of Submitters in the processing of proposals of national significance is clearly considered by the EPA to be worthwhile. A Friend has been appointed consistently to assist submitters, particularly non-expert submitters without legal advisors, for proposals that have been called in since October 2009, although the EPA initially considered a graduate planner with two to three years' experience would have sufficient expertise to be suitable for the role (van Voorthuysen, 2010)[110]. The Board made a point of noting the value of this role in the process:

> A number of submitters praised his assistance, and we record our gratitude to him for his efforts. His work was of importance to the orderly progress of our inquiry, and seemed to us to be necessary out of fairness to potential submitters, given the relatively short statutory timeframe… within which we were directed by statute to complete our task, and the correspondingly short time that interested persons had to make submissions (The Board, 2011b, p. 9, para. 12).

The main opportunity for non-expert submitters to participate in the Waterview Connection proposal itself outside the hearing was through the preliminary meetings initiated by the Board on social and open space issues. These were arranged to allow non-experts to contribute their knowledge on these topics on an equal footing with the experts, and inform the expert caucusing sessions (The Board, 2011a, p. 66, para. 202). This participation appears to be approaching the 'collaborate' stage of the IAP2 public participation spectrum, which promises that "we will look to you for direct advice and innovation in formulating solutions"; however, the extent that non-expert caucusing realised the promise to "incorporate your advice and recommendations into the decisions to the maximum extent possible" (2004, n.p.) is uncertain.

The timeframes were rigidly adhered to, in order to avoid going over the nine month processing limit, until April 2011 when a nine day extension for notifying the final report

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[109] Presumably through means such as the Community Environment Fund, administered by the Ministry for the Environment, which "provides funding so New Zealanders are empowered to take environmental action" (Ministry for the Environment, 2013a).
[110] As discussed in section 5.4.10.

was granted by the Ministers (The Board, 2011c).[111] The lack of time, the volume of submissions, and the complexity of the issues were factors that inhibited the ability of NZTA to approach every submitter and work through their issues.

6.5 The hearing and the decision

The variations between the hearing processes for the Cambridge Expressway and Waterview Connection proposals demonstrate significant differences between the two processes in relation to the participation of non-expert submitters. Both a hearing panel and a board of inquiry have essentially the same function: making a decision as to whether a proposal should go ahead or not, and what conditions should be attached to any resource consents. However, the analysis shows that in these cases the way they carried out this function was quite different.

As discussed above[112], the Cambridge Expressway proposal was heard by a panel of four independent commissioners and Waterview Connection by a panel of five, chaired by an Environment Court judge and including an Environment Court commissioner and three independent commissioners. Cambridge Expressway was held over four days. The Waterview Connection Board of Inquiry was held over sixteen days between 7 February and 25 March 2011.The Cambridge Expressway hearing was held at the Cambridge Raceway (Rice, 2011). Waterview Connection was heard at the Environment Court building in central Auckland (The Board, 2010a). Cambridge Expressway could have been appealed to the Environment Court by any of the parties involved on any grounds; Waterview Connection could have been appealed to the High Court, by any party but on points of law only.

These three factors demonstrate some stark differences in procedural formality between the conventional consenting pathway and a board of inquiry process. Nick Smith, the Minister for the Environment responsible for calling in the proposal for the men's prison at Wiri and referring it to a board of inquiry, preferred the board of inquiry option over decision-making by Auckland Council or the Environment Court for the following reasons:

[111] This extension was granted to ensure that the Board could have "further assistance from the parties' experts on further drafting work on conditions" (The Board, 2011c, p. 1).
[112] In sections 5.3.7, 5.4.7 and 6.2.

> The disadvantage of the Council process was that as a designation, the Council only makes a recommendation and the final decision is for the Minister of Corrections. The Environment Court process is more formal than a Board of Inquiry and would limit participation by citizens wanting to be heard without legal representation. The Board of Inquiry is the best process for this application in that it is independent of Ministers, will enable communities to have their say and will deliver a decision within nine months (Smith, 2010b, n.p.).

The legislative framework allows the board of inquiry process to be less formal than an Environment Court hearing, and run along the same lines as a conventional hearing. However, as long as a board of inquiry is chaired by a judge and must notify its decision within a tight timeframe, then it is likely that the board will be run using the processes the judge is familiar with to deliver the required result; that is, more like the Environment Court.

As discussed in section 5.4.9, Judge Newhook categorised and defined the different types of appearances that the parties involved would make, and the type of information that would be heard, from the outset. This was clearly split into 'evidence' (both non-expert and expert), which was defined as "statements made at the hearing that tend to prove facts in issue, or facts from which facts in issue may be inferred", and 'representations', a synonym for 'submissions', "essentially advocacy of …[a submitter's] position" (The Board, 2010b, p. 2). 'Expert evidence' could only be given by qualified expert in line with the Environment Court's code of conduct for expert witnesses (2006), which set out that the witnesses must remain independent and not act as an advocate for whomever has employed them (The Board, 2010b).

Unlike the Cambridge Expressway decision report which discusses all the submissions made at the hearing in detail, the Waterview Connection report is dominated by discussion of evidence, predominantly expert evidence. In contrast, references to representations from non-expert submitters are limited in number and detail, and generally provided as an example of the issues raised by non-experts on a particular topic. Non-expert representations were given little weight (or were dismissed outright) where they criticised expert evidence. In response to Matthew Tritt's representation[113], for example, the Board stated "we have no basis for doing other than holding that

[113] Discussed in section 5.4.8.

NZTA has provided us with reliable evidence from appropriately qualified experts" (2011b, p. 63, para. 189). Likewise, the Board commented that Graeme Easte[112] "was not called as a professional witness…He is a local body politician" (2011a, p. 335, para. 1306).

The Board's discussion of one of the non-experts adds to the view that it gave greater weight to expertise. Ms Riley's representations are discussed twice within the Report, and in both instances the Board notes that she is a resident and *an architect* (The Board, 2011a, p. 113, para. 406 and p. 300, para. 1163). This implies that her expertise was taken into account by the Board when it considered her representation, possibly elevating its status above those made by other non-expert submissions.

The conditions were drafted by the experts involved in the hearing, under instruction from the Board (see, for example, The Board, 2011a, p. 319, para. 1230 and p. 320, para. 1233; 2011c, p. 2). There is no suggestion that non-expert submitters had any access to this process, other than via their representations to the Board which may have influenced the instructions it gave to the experts.

It is also important to note that conditions did not always deliver final outcomes[114]. For example, the design and location of the northern ventilation buildings and stack were not finalised; General Designation Condition DC.8 requires that "The final form of the Northern Ventilation Buildings and Stack shall be in accordance with" design principles set out within the consent and a number of specific requirement relating to its form, location and visual characteristics (The Board, 2011b, p. 5). The final location is to be decided in consultation with Community Liaison Group(s), established under Public Information Condition PI.5, which are to "be open to all interested parties within the Project area" (2011b, p. 25). While access to these groups, and consequently to participation in the decision-making on final aspects of the proposal, is wide, its role is limited; the groups "shall be provided opportunities to review and comment on" plans, details and designs that are still to be finalised. This approach appears to reach the 'consult' stage of the IAP2 public participation spectrum, which promises that decision-makers "will keep you informed, listen to and acknowledge concerns and provide feedback on how public input influenced the decision" (2004).

[114] This was also true for some aspects of the Cambridge Expressway decision, including the requirement to develop a dust management plan in Condition 17 (Withy et al., 2011, pp. 66-67); however, condition and attached advice note provided a degree of certainty to the non-expert submitters that the dust effects would be managed.

6.6 Conclusion

This chapter has discussed the four key themes that have emerged from the analysis of the Cambridge Expressway and Waterview Connection proposals, in the context of the published literature. The differences in scale, particularly when combined with different degrees of flexibility and restriction in processing timeframes, and greater formality in hearing procedure, resulted in more barriers to non-expert participation in the Waterview Connection process. Similarly, the weight given to *evidence* and *expertise* compared with that given to *representations* by the Board shows that the non-expert submitters on the Waterview Connection proposal had less ability to influence the decision and conditions where their views did not coincide with those of experts.

Levels of participation by non-experts in both processes rarely moved beyond the 'involve' stage of the IAP2 public participation spectrum. However, NZTA's consultation with non-expert submitters prior to the Cambridge Expressway hearing did include an element of the 'collaborate' stage. The significantly greater scale of the Waterview Connection process and the nine month processing time limit did not allow the same approach to consulting with all submitters on this proposal. Although the applicant (NZTA) clearly did work with submitters towards resolving outstanding issues throughout the process, references to these efforts within the documentary evidence indicates that its focus was on expert submitters.

Public participation has consistently been fundamental to resource management decision-making processes, under the RMA and its predecessors. While the right of any person to participate remains unchanged, the national consenting process is undermining that right by creating more barriers to effective participation by non-experts. The impact of the 2009 'simplification and streamlining' of the RMA on non-expert participation is that it is simply more difficult for non-experts to participate in proposals that have local impacts but are decided at a national level.

7. Conclusion

7.1 Introduction

This research sought to answer the question 'What has been the effect on non-expert participation in environmental decision-making in New Zealand of the 2009 'simplifying and streamlining' reforms of the RMA?' Two case studies of proposals for roads of national significance were undertaken, using thematic analysis of the documentary records and cross-case comparison. One case, the Cambridge Expressway proposal, was a conventional consenting process managed by local authorities and decided by a council-appointed panel. The other was the Waterview Connection proposal, a national consenting process managed by the EPA and decided by a board of inquiry. The documentary analysis focused on non-expert submitters and their submissions, and the way the final decision documents and conditions reflected their participation and their influence on the process and its outcomes.

7.2 Summary of findings

Four key themes emerged from the analysis of the two cases. These were:

i. the volume of material and the challenges for submitters to access and utilise it effectively in the submission-making process;

ii. the impact of the nine month processing timeframe for a board of inquiry process;

iii. the relative weight given by the decision-makers to different types of information presented to them; and

iv. the formality of the hearing process.

The research revealed that non-expert submitters to the Waterview Connection national consenting process experienced significantly greater barriers to participation as a result of the scale of the proposal and the associated volume of information included in the application, evidence and hearing, especially when coupled with the restricted timeframes available to the EPA and the Board of Inquiry to complete the

process and make a decision available. Open access to information is fundamental to participation. This includes ensuring that those affected by or interested in a proposal have the means to obtain the information, including time, transport to get where it is held or a computer and broadband connection to download it. To present a joint case, submitters need access to personal contact information that the EPA does not make available. The board of inquiry process significantly affected non-expert submitters' ability to access the information they needed to participate effectively.

The greater consideration of, and value given to, experts and their evidence over non-experts' submissions and representations by the Board of Inquiry is evident through the discussion of what was brought before it and how this influenced its decision. Non-experts had limited access to consultation processes, including caucusing, once the application was lodged, and were not directly involved in the consent drafting process carried out by experts. The formality of the hearing and its domination by experts and lawyers added further barriers to non-expert participation.

In contrast, there was some flexibility within the timeframes available to the local authorities processing the Cambridge Expressway proposal, which was utilised. It enabled on-going interaction between the applicant and submitters, including non-expert submitters, before the hearing. It seems likely, given the evidence from national consenting processes, that the six month processing timeframe for all notified applications processed local authorities will impact on this flexibility and increase the barriers to non-expert participation in conventional consent processing. The decision of the hearing panel is equally detailed in its discussion of the matters brought before it by all submitters. Non-expert submitters clearly influenced the decision and aspects of the consent conditions.

7.3 Limitations and future research

There are limitations to any research project, and this is no exception. It provides a base-line for future investigations into a relatively new, and rapidly developing area. The research compared the processes used to reach a decision on two resource management proposals, by analysing the official documentary record. Both were roading projects; the experiences and concerns of non-expert submitters to other types of proposals may be somewhat different. The study concludes with the decisions made by the Board of Inquiry and the hearing panel. Consequently, there was no consideration of the outcomes of the Community Liaison Group approach to finalising

some matters for the Waterview Connection proposal, discussed in section 6.5. Likewise, an examination of whether, and how many, non-experts with an interest in either proposal were deterred from making a submissions and the reasons behind this was outside the scope of this research. Research involving direct contact with participants and affected parties would be needed to effectively investigate these questions.

However, the main limitation of this research relates to the group of participants studied. The non-expert submitters were categorised as a single group and no consideration was given to whether they could be deemed to be directly affected by the proposals (for example a local resident, land owner or member of an affected school community) or they made a submission because they had an interest in a broader aspect of the proposal (such as whether roads or public transport should be resourced, or the impact on open and recreational space). At present, "any person[115]" can make a submission to a notified resource consent application but there are currently proposals to further amend the RMA to limit notification of proposals and the scope of submissions and appeals (Ministry for the Environment, 2013c). A robust study of what is contributed to resource management decision-making processes by submitters who are not 'directly affected', such as the Environmental Defence Society's participation in the New Zealand King Salmon Board of Inquiry or Forest and Bird's involvement in Bathurst Resources' application to mine the Denniston Plateau, may be needed to ensure that open participation rights are not eliminated altogether.

This research has identified some matters that could not be investigated in great depth. The first of these is the role of 'friend of the submitters' within board of inquiry processes. The analysis touches on aspects such as the extent of this person's role, the value of extending it to assist submitters during the hearings, and who has responsibility for, and influence over, the choice of the friend in each case. It appears that there is value in appointing a friend of the submitter to assist the public, and that one will be appointed for all national consenting processes. A closer examination of this practice should be carried out with a view to maximising its benefits.

Another matter is ministerial influence, specifically the degree of influence the Minister for the Environment has over the operation of the EPA and the decisions referred to boards of inquiry. The Minister is obviously more closely involved in national

[115] Sections 96(2) and 149O(3).

consenting processes and the EPA's functioning: she appoints the EPA Board members, decides which proposals will go through the process and what type of body will make a decision (Environment Court or board of inquiry), and appoints boards of inquiry. This research, however, does not investigate the direct implications of greater ministerial powers on non-expert participation in resource management decision-making.

Other matters not considered in depth are the similarities between decision-making under the National Development Act 1979 and the national consenting process, and the influence of political ideology on RMA reforms over time. The national consenting process has as its underlying raison d'etre the presumption that conventional resource management decision-making processes do not enable economic growth because they take too long, cost too much and the outcome is too uncertain (Adams, 2013b; Smith, 2010a). An analysis of parliamentary debates and a review of relevant literature suggests strong parallels between the National Development Act 1979 and amendments to the RMA thirty years later.

7.4 Conclusion

The ability of non-experts to participate in planning and resource management in New Zealand was established long before the RMA, and has been a hallmark of that legislation for nearly twenty years. The 2009 amendments have substantially eroded this principle. When an application is made directly to the EPA for processing, it is generally big and complex. The size and complexity are themselves barriers to non-expert participation in the decision-making for these proposals under the RMA. When the proposal is referred to a board of inquiry to decide, the barriers increase. The strict nine month timeframe available to make a decision is unrealistic, the volume of material and the more formal approach to the proceedings overwhelming, and the dominant value given to expertise weakens the contribution of non-experts to the decision-making process. These factors are significantly undermining the ability of non-experts to participate in decision-making for proposals of national significance.

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APPENDIX A

Participants In Resource Consent Processes

Participants in resource consent processes

Group	Description
Applicant	The party making the proposal – an individual, group of individuals or a company who wants to do something that is not a permitted activity under the district or regional plan.
Decision maker	The body authorised to make a decision about the proposal on behalf of the community; includes local authorities, the Environment Court, boards of inquiry depending on the scale of the proposal and the extent of the community it will affect.
Affected parties	Affected parties are anyone who will be adversely affected by a proposal, who must be given the opportunity to make a submission on the proposal. They may include downstream resource users, neighbours and iwi authorities, but not trade competitors or, usually, public interest groups. Individuals may form interest groups in response to a particular proposal, however; for example, landscape guardian groups which have formed in response to wind farm developments. As affected parties are often non-experts, they may employ experts or advocates to act on their behalf.
Technical experts	This group includes those people engaged by the parties to the process (the applicant, submitters, consent authority, etc) to provide technical advice and evidence relating to the effects of the proposal. Includes scientists, engineers and landscape architects. It is expected that their evidence will be confined to matters within their area of expertise and must generally be given in line with the Code of Conduct for Expert Witnesses as set out in Environment Court of New Zealand Practice Note (Environment Court of New Zealand, 2011) – impartially and not as an advocate for their employer's position.

Planners	Planners are also experts engaged by the parties to the process. Their role is to provide advice and evidence in relation to how the effects of the proposal interact with the planning framework (including the RMA, national policy statements, national environmental standards, regional policy statements, district and regional plans). Planners are also expected to act in accordance with the Code of Conduct for Expert Witnesses.
Advocates	This group is not required to be neutral, but will advocate the position of the party they represent. Thus, they may be expert but they are not experts in the sense that planners and technical experts are. Advocates include lawyers.
Public interest groups	Public interest groups represent an aspect of the public interest; they are non-government organisations with varying interests, resources, expertise and familiarity with resource management processes, and they have some degree of formality in their structure. Examples include national and local environmental groups, ratepayers or residents organisations.
Māori	"The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" is recognised as a matter of national importance in the purpose and principles of the RMA (s 6(e)). Decision makers must also have regard to kaitiakitanga (s 7(a)) and must take into account the principles of the Treaty of Waitangi (s 8). As such, Māori have a special role in resource management (Vince, 2006), and therefore in consent processes, and will provide expert advice regarding the effects on the values of iwi and hapū.
Local authorities	Local authorities have several different roles within consenting processes, depending on the extent of the proposal. They may be the decision maker, the manager of the process, or the provider of technical and/or planning expertise.

APPENDIX B

Map of the Cambridge Expressway Proposal

Map of the Cambridge Expressway, reproduced from *Waikato Expressway - Cambridge section: resource consent applications and assessment of environmental effects* (2010g, p. 21)

APPENDIX C

Submission Form – Waipa District Council

Waipa DISTRICT COUNCIL

Ref No:	
Val No:	
Doc No:	
To:	

SUBMISSIONS CLOSE ON 6 APRIL 2011 AT 5.00 PM

SUBMISSION ON A PUBLICLY NOTIFIED REQUIREMENT FOR ~~A DESIGNATION or~~ ALTERATION OF DESIGNATION *(delete not applicable)*

Sections 168A, 169, 181, 189A, 190, and 192(f), Resource Management Act 1991 *(delete whichever not applicable)*

(Form 21)

To: Waipa District Council, Private Bag 2402, Te Awamutu 3840 Att: Donna Fordham
101 Bank Street, Te Awamutu
Ph 07 872 0030 Fax 872 0033
Email: submissions@waipadc.govt.nz

23 Wilson Street, Cambridge
Ph 07 823 3800 Fax 07 823 3820

****Please note all sections of the following form need to be completed****

NAME OF SUBMITTER:

Full Name:.....

Postal Address For Service:.....

Phone:.....**Email:**.....**Fax:**.....

Contact Person.....

THE SPECIFIC PARTS OF THE NOTICE OF REQUIREMENT THAT MY SUBMISSION RELATES TO, AND WHETHER I SUPPORT, OPPOSE OR WISH TO AMEND IT; ARE: *(detail the parts of the application you are submitting on and advise whether you support, oppose or wish to have it amended by circling the appropriate option).*

1.....Support/~~Oppose~~/Amend

.....

..... Support/~~Oppose~~/Amend

.....

THIS IS A SUBMISSION ON A NOTICE OF REQUIREMENT FROM:

Name of Territorial Authority or Requiring Authority :- ***New Zealand Transport Agency***

FOR A DESIGNATION or AN ALTERATION TO A DESIGNATION *(delete whichever not applicable)*
TO: *(briefly describe the relevant designation and the site or place to which the designation applies)*

Proposed Designation: ***Cambridge Bypass***.....

Location: ***Cambridge***.....

THE REASONS FOR MY VIEWS ARE:

.....

.....

.....

.....

.....

.....

I SEEK THE FOLLOWING RECOMMENDATION OR DECISION FROM THE TERRITORIAL AUTHORITY:
(give precise details, including the general nature of any conditions sought)

.....

.....

.....

.....

.....

.....

.....

I WISH TO BE HEARD IN SUPPORT OF MY SUBMISSION:

Yes ☐ No ☐ (please tick)

IF OTHERS MAKE A SIMILAR SUBMISSION I WILL CONSIDER PRESENTING A JOINT CASE WITH THEM AT THE HEARING:

Yes ☐ No ☐ (please tick)

SIGNATURE:

To be signed by submitter or person authorised to sign on behalf of submitter.

(NB. A signature is not required if you make your submission by electronic means).

Signed.....

Date:.....

APPENDIX D

Submission Form – Waikato Regional Council

Submission Form

Notice of submission under the Resource Management Act 1991
(pursuant to section 96) form 13

SUBMISSIONS CLOSE ON 6 APRIL 2011
AT 5.00 PM

To: Environment Waikato (Waikato Regional Council)
P O Box 4010
HAMILTON EAST 3247

Attention: Peter Roberts

NAME OF SUBMITTER: _____

This is a submission on an application from *(name of applicant)* **New Zealand Transport Agency,**
for resource consents, or change to consent for the:

Cambridge Bypass.

Briefly describe activity: ie. type of consent, proposed activity, and location.

Specific parts of the application that my submission relates to are:
(give details)

My submission is:

◯ IN SUPPORT OF THE APPLICATION(S)

◯ IN OPPOSITION TO THE APPLICATION(S)

◯ NEITHER IN SUPPORT OR IN OPPOSITION *(neutral submission)* BUT WISH TO MAKE COMMENT

Environment Waikato's Freephone 0800 800 401
www.ew.govt.nz

Environment Waikato Regional Council

The reasons for my views are:

I seek the following decision from the consent authority:
(give precise details, including the general nature of any conditions sought)

Do wish to be heard in support of your submission. ◯ Yes ◯ No

Address for service of submitter:

Street Name: PO Box/Private Bag:

Suburb: Suburb:

Town: Postal Code: Town: Postal Code:

Telephone: **Fax/Email:**

Contact person:
(name and designation, if applicable)

Will you consider presenting a joint case at a hearing if others make a similar submission?

◯ Yes ◯ No

* Signature of submitter _____ Date _____
(or person authorised to sign on behalf of submitter)

Note to submitter
You must serve a copy of your submission on the applicant, using the address in the Public Notice, as soon as reasonably practicable after you have served your submission on the consent authority.

If faxing your submission, fax to: (07) 859 0998. *Please also send the original version by post.*

Thank you for taking the time to complete this submission form. Should you require any assistance in completing this form, or wish to discuss the proposal with staff, please contact staff on our Resource Use Freephone 0800 800 402.

APPENDIX E

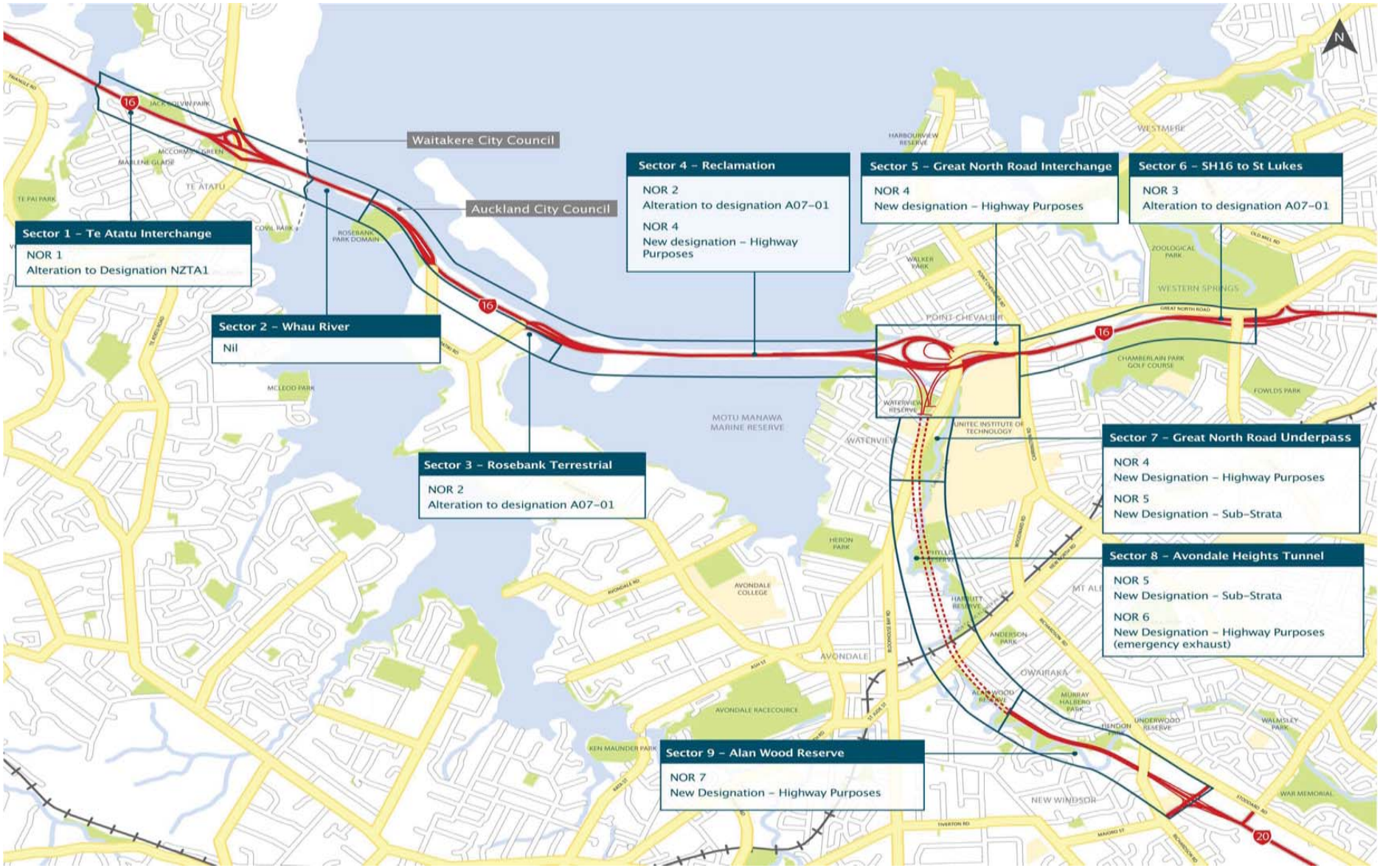
Timeline – Cambridge Expressway

CAMBRIDGE EXPRESSWAY – TIMELINE

<table>
<tr><td colspan="3">Early 1970s
Consultation for original designation commences</td></tr>
<tr><td colspan="3">1989-1991
Re-evaluation of original designation / route</td></tr>
<tr><td colspan="3">2007-2011
Consultation for final proposal</td></tr>
<tr><td colspan="3">23 December 2010
New Zealand Transport Authority (NZTA) gives notice of notices of requirement to Waipa and Waikato District Councils, and application for resource consents to Waikato Regional Council</td></tr>
<tr><td colspan="3">7 January 2011
Applications and notices lodged with local authorities</td></tr>
<tr><td colspan="3">14 January 2011
NZTA agree to extension of timeframe to notify application</td></tr>
<tr><td>24 January 2011
Further information requested
(Waipa District Council)</td><td>4 February 2011
Further information requested
(Waikato Regional Council)</td><td>8 March 2011
Further information requested
(Waikato District Council)</td></tr>
<tr><td>8 March 2011
Further information supplied
by NZTA</td><td>2 March 2011
Further information supplied
by NZTA</td><td>9 March 2011
Further information supplied
by NZTA</td></tr>
<tr><td colspan="3">9 March – 6 April 2011
Public submission period (20 working days)</td></tr>
<tr><td colspan="2">15 April 2011
Further information requested by
Waipa and Waikato District Councils</td><td>18 April 2011
Further information requested by
Waikato Regional Council</td></tr>
<tr><td colspan="3">13 May - 2 June 2011
Further information supplied by NZTA</td></tr>
<tr><td colspan="3">18 May 2011
Timeframe between close of submissions and hearing extended by Waipa District Council using section 37(4)(b)(i) (special circumstances)</td></tr>
<tr><td colspan="3">15 June 2011
Section 42A report (commissioned by local authorities) due</td></tr>
<tr><td colspan="3">27 June 2011
NZTA Evidence in Chief due</td></tr>
<tr><td colspan="3">7 July 2011
Submitter evidence due</td></tr>
<tr><td colspan="3">19 July 2011
Rebuttal evidence due</td></tr>
<tr><td colspan="3">3 August 2011
Supplementary evidence due</td></tr>
<tr><td colspan="3">10 – 15 August 2011
Hearing</td></tr>
<tr><td colspan="3">22 August 2011
Hearing formally closed</td></tr>
<tr><td colspan="3">8 September 2011
Decision and recommendations completed</td></tr>
</table>

APPENDIX F

Map of the Waterview Connection Proposal



Reproduced from the Assessment of Environmental Effects (New Zealand Transport Agency, 2010f, p. 1.5)

APPENDIX G

Timeline – Waterview Connection

WATERVIEW CONNECTION – TIMELINE

1996 **State Highway 20** project commenced		
1996 - 2001 Feasibility and scoping reports, etc		
2002 Preliminary scheme assessment		
2003 Route options assessment		
2006 Review of proposal		
2007-2009 Variety of options for construction considered	**2007** **State Highway 16** Preliminary scheme assessment	
	2009 Causeway ground improvement and construction options study	
2009 State Highway 20 and State Highway 16 projects merged to form **Waterview Connection Project**		
20 August 2010 New Zealand Transport Agency (NZTA) lodges application with EPA		
27 August 2010 EPA lodges application; recommends referral to Board of Inquiry		
18 September 2010 Public notification of Ministers' decision to refer application to Board of Inquiry	**18 September to 15 October 2010** Public submission period (20 working days)	
15 November 2010 NZTA's Evidence in Chief exchanged		
17 December 2010 Submitters' evidence exchanged		
Mid-January – 7 February 2011 Caucusing	**4 February 2011** NZTA's rebuttal evidence exchanged	**7 February 2011** Caucusing reports due Hearing commenced
February – March 2011 Further caucusing	**7, 11,15, 16, 18, 28 February; 1, 2, 7-11, 21,22 and 25 March 2011** Hearing	
6 April 2011 Extension (9 working days) to produce final report granted		
6 May 2011 Board of Inquiry direct experts to redraft certain consent conditions		
13 May 2011 Experts deliver redrafted consent conditions		
24 May 2011 Board of Inquiry releases draft decision and report	**24 May – 8 June 2011** Experts directed to carry out further drafting of consent conditions	**24 May – 23 June 2011** Period for submitters, Ministers, applicant, local authorities to comment on draft (20 working days)
29 June 2011 Board of Inquiry makes Final Report and Decision		

APPENDIX H

Submission Form – Environmental Protection Authority

Environmental Protection Authority
Te Mana Rauhī Taiao

Submission on the Waterview Connection Proposal

Section 149E of the Resource Management Act 1991

To: Waterview Connection Proposal
Environmental Protection Authority
PO Box 10362
Wellington 6143

Email: waterview@epa.govt.nz
Fax: (04) 439 7714
(Note: if you are emailing or faxing your submission, please mark in the subject line: *Waterview Connection*)

This submission relates to the applications for resource consent and notices of requirement and alterations to notices of requirement lodged with the Environmental Protection Authority (EPA) by the New Zealand Transport Agency (NZTA) for the Waterview Connection Proposal.

It is important that you complete all sections on this form and that the EPA receives this submission before the closing date and time below.

If you have any questions about making a submission, or you do not understand part of this form, please contact the EPA on 0800 H2OVIEW (0800 4268439), or visit www.epa.govt.nz, for details of the Friend of the Submitter who is available to provide assistance and information on the submission process.

Closing date and time for submissions: 5.00pm, 15 October 2010

Submitter details

Title: Mr Mrs Miss Ms (Please circle the appropriate title(s) or print clearly below)

My/Our Full Name(s):

Postal Address:

Physical Address:

Work Ph: Home Ph: Cell:

Work Fax: Home Fax:

Email:

Electronic communication

The EPA has a preference for receiving submissions via email, and for providing information and updates to submitters via email also.

However, if you would prefer to have a paper copy of documents please tick here. (Please note this may not be possible with all documents and the means of communication with submitters may be the subject of directions by the Board of Inquiry.) ☐

New Zealand Government

Privacy

Your personal information provided on this cover page of this submission form will be held by the EPA, 23 Kate Sheppard Place, Wellington. It will be used by the EPA as required for the administration of these notified resource consent and notice of requirement applications, and copies will be provided to the Board of Inquiry and the applicant and may also be provided to other parties to the process. It will not be published on the EPA website. You have the right to access and correct personal information held by the EPA.

The pages of the submission form following this cover sheet (including your name) and any attached information will be published on the EPA website, and made available to members of the Board of Inquiry, the applicant and the public for use in the processing and consideration of the Waterview Connection application.

ENVIRONMENTAL PROTECTION AUTHORITY

Submitter name (please insert): _____

Submitter position

Please tick (✓) the relevant box(s) below to show whether you support the application in full or in part, or oppose the application in full or in part, or are neutral. Please note that you cannot both be neutral, support and oppose the application in full; however, you may be neutral to part of the application and/or support and/or oppose the application in part.

☐ I/We support the applications in full	☐ I/We support the applications in part
☐ I/We oppose the applications in full	☐ I/We oppose the applications in part
☐ I/We are neutral on all aspects of the applications	☐ I/We are neutral in part

Please tick the boxes in the table below to identify whether you are making a submission on all of the matters being applied for or just some of them.

I/we make my/our submission concerning **all** applications for resource consent/notice of requirement below **OR**	☐
My/our submission **only** concerns the applications for resource consent/notice of requirement that I/we have ticked below (✓):	☐

	Support	Support in Part	Oppose	Oppose in Part	Neutral	Neutral in Part
Waitakere City Council Notice of Requirement/Land Use						
EPA 10/2.001 (WCC: NOR – 2010 – 1034) Notice of Requirement to alter designation NZTA1 SH16 between Whau River and Henderson Creek (shown on map as NOR 1)						
EPA 10/2.002 (WCC: LUC – 2010 – 1035) Reclaimed Land Use for SH16 and Ancillary Activities						
Auckland City Council Notice of Requirement/Land Use						
EPA 10/2.003 (ACC: Plan Modification 202) Notice of Requirement to alter designation A07-01 SH16 Causeway and Rosebank Peninsula (existing terrestrial locations only) and shown on map as NOR 2						
EPA 10/2.004 (ACC: Plan Modification 202) Notice of Requirement to alter designation A07-01 SH16 between Great North Road and St Lukes interchanges (shown on map as NOR 3)						
EPA 10/2.005 (ACC: Plan Modification 202) Notice of Requirement for a new designation SH16, SH20 and Great North Road underpass (shown on map as NOR 4)						
EPA 10/2.006 (ACC: Plan Modification 202) Notice of Requirement for a new designation, SH20 Tunnels, Great North Road underpass to Alan Wood Reserve (shown on map as NOR 5)						
EPA 10/2.007 (ACC: Plan Modification 202) Notice of Requirement for a new designation for an Emergency Tunnel Exhaust, 36 Cradock Street, Avondale (shown on map as NOR 6)						
EPA 10/2.008 (ACC: Plan Modification 202) Notice of Requirement for a new designation, SH20 Southern Tunnel portal to Maioro Street interchange (shown on map as NOR 7)						
EPA 10/2.009 (ACC: R/LUC/2010/3396) Reclaimed Land Use for SH16 and Ancillary Activities						

ENVIRONMENTAL PROTECTION AUTHORITY

Submitter name (please insert): _____

	Support	Support in Part	Oppose	Oppose in Part	Neutral	Neutral in Part
Auckland Regional Council Permits						
EPA 10/2.010 (ARC:38313) Land Disturbance for Roading, Tracking and Trenching						
EPA 10/2.011 (ARC:38316) Oakley Creek Stormwater Piping						
EPA 10/2.012 (ARC:38317) Bridges over Oakley Creek						
EPA 10/2.013 (ARC:38318) Stormwater Outfall Structures, Pixie Stream						
EPA 10/2.014 (ARC:38319) Stormwater Outfall Structures, Oakley Creek						
EPA 10/2.015 (ARC:38320) Stormwater Outfall Structures, Meola Creek						
EPA 10/2.016 (ARC:38321) Diversion of Oakley Creek and an unnamed tributary of Oakley Creek						
EPA 10/2.017 (ARC:38322) Diversion and Discharge of Stormwater to Water Table of a Road						
EPA 10/2.018 (ARC:38323) Stormwater Diversion and Discharge from Roads						
EPA 10/2.019 (ARC:38324) Stormwater Discharges in Urban Areas						
EPA 10/2.020 (ARC:38325) Discharges from Rock Crushing Activities						
EPA 10/2.021 (ARC:36474) Discharges from Contaminated Land						
EPA 10/2.022 (ARC:38326) Discharges to Land and Water from a Concrete Batching Plant						
EPA 10/2.023 (ARC:38327) Discharge to Air from Crushing Activities						
EPA 10/2.024 (ARC:38328) Discharges to Air from a Concrete Batching Plant						
EPA 10/2.025 (ARC:38329) Discharge to Air from Road Works						
EPA 10/2.026 (ARC:38330) Floodplain Flow Diversions						
EPA 10/2.027 (ARC:38331) Groundwater Diversion during Construction						
EPA 10/2.028 (ARC:38332) Groundwater Diversion during Operation						
EPA 10/2.029 (ARC:38333) Groundwater Diversion for the Tunnel						
EPA 10/2.030 (ARC:38334) Use of the Coastal Marine Area for SH16						
EPA 10/2.031 (ARC:38335) Temporary Structures in the Coastal Marine Area						
EPA 10/2.032 (ARC:38336) Permanent Structures in the Coastal Marine Area						

ENVIRONMENTAL PROTECTION AUTHORITY

Submitter name (please insert): _____

	Support	Support in Part	Oppose	Oppose in Part	Neutral	Neutral in Part
Auckland Regional Council Permits						
EPA 10/2.033 (ARC:38338) Temporary Structures in the Coastal Marine Area – Waterview Estuary						
EPA 10/2.034 (ARC:38339) Permanent Structures in the Coastal Marine Area – Waterview Estuary						
EPA 10/2.035 (ARC:38340) Temporary Structures in the Coastal Marine Area – Oakley Creek Inlet						
EPA 10/2.036 (ARC:38341) Permanent Structures in the Coastal Marine Area – Oakley Creek Inlet						
EPA 10/2.037 (ARC:36576) Temporary and Permanent Reclamation in the Coastal Marine Area						
EPA 10/2.038 (ARC:38342) Temporary and Permanent Reclamation in the Coastal Marine Area						
EPA 10/2.039 (ARC:38343) Disturbance of Foreshore and Seabed for Construction						
EPA 10/2.040 (ARC:38344) Disturbance of Foreshore and Seabed for Vegetation Removal						
EPA 10/2.041 (ARC:38345) Disturbance of the Foreshore and Seabed during Construction						
EPA 10/2.042 (ARC:38346) Disturbance of the Foreshore and Seabed when using Motor Vehicles						
EPA 10/2.043 (ARC:38347) Taking and Use of Inner Coastal Water for Coffer Dam						
EPA 10/2.044 (ARC:38348) Damming and Impounding of Inner Coastal Water for Coffer Dam (General Management Area)						
EPA 10/2.045 (ARC:38349) Daming and Impounding of Inner Coastal Water for Coffer Dam (Coastal Protection Area)						
EPA 10/2.046 (ARC:38350) Discharge of Contaminants and Contaminated Stormwater to the Coastal Marine Area						
EPA 10/2.047 (ARC:38351) Discharge of Contaminants and Stormwater to the Coastal Marine Area						
EPA 10/2.048 (ARC:38352) Permanent Discharge of Stormwater to the Coastal Marine Area, Henderson Creek						
EPA 10/2.049 (ARC:38353) Permanent Discharge of Stormwater to the Coastal Marine Area, Whau River and Mooring Management Area						
EPA 10/2.050 (ARC:38354) Permanent Discharge of Stormwater to the Coastal Marine Area, Causeway and Interchange						
EPA 10/2.051 (ARC:38355) Permanent Discharge of Stormwater to the Coastal Marine Area, Great North Road Interchange, Pt Chevalier, General Management Area						
EPA 10/2.052 (ARC:38356) Permanent Occupation of the Coastal Marine Area, SH16 Widening						

ENVIRONMENTAL PROTECTION AUTHORITY

Submitter name (please insert): _____

	Support	Support in Part	Oppose	Oppose in Part	Neutral	Neutral in Part
Auckland Regional Council Permits						
EPA 10/2.053 (ARC:38357) Occupation of the Coastal Marine Area, Stormwater Outfalls, Henderson Creek						
EPA 10/2.054 (ARC:38359) Occupation of the Coastal Marine Area, Stormwater Outfalls, Whau River and Mooring Management Area						
EPA 10/2.055 (ARC:38360) Occupation of the Coastal Marine Area, Stormwater Outfalls, Causeway, Interchange, Waterview Inlet and Surrounds						
EPA 10/2.056 (ARC:38361) Occupation of the Coastal Marine Area, General Management Area						
EPA 10/2.057 (ARC:38362) Occupation of the Coastal Marine Area, CPA 2						
EPA 10/2.058 (ARC:38363) Occupation of the Coastal Marine Area, CPA 1						
EPA 10/2.059 (ARC:38364) Permanent Occupation of the Coastal Marine Area, General Motorway Widening						
EPA 10/2.060 (ARC:38365) Use, Operation and Maintenance of the Coastal Marine Area by the state highway						
EPA 10/2.061 (ARC:38366) Use, Operation and Maintenance of the Coastal Marine Area by the state highway						

Reasons for submission

If you are making a submission only on parts of an application for resource consent/notice of requirement please note which part when specifying the reasons for your submission.

The reasons for my/our submission are:

Please use more pages if you need to. If you are attaching information please tick ☐

ENVIRONMENTAL PROTECTION AUTHORITY

Submitter name (please insert): _____

I/we seek the following decision from the Board of Inquiry (provide precise details including the nature of any conditions or changes sought):

Please use more pages if you need to. If you are attaching information please tick ☐

Wish to be heard

Please indicate below whether you would like to speak at a hearing for Waterview Connection. Use a clear tick in the appropriate box below (✓)

I/we **do not wish to be heard** and hereby make my/our submission in writing only. (This means that you will not be advised of the date of the hearing and cannot speak at the hearing.)	☐
I/we **wish to be heard** in respect of my/our submission (to speak at the public hearing). (This means you can speak at the hearing. If at a later date you decide you no longer wish to speak at the hearing you can withdraw from being heard.)	☐
If others make a similar submission, I/we will consider presenting a joint case with them at the hearing. (This is only for parties wanting to be heard.)	☐
I/we intend to call expert witness(es). Please indicate the disciplines of expected expert witnesses:	☐

(If you do not tick this box, you can change your mind later and decide to call experts to give evidence in relation to your submission, provided you do so in time to meet any procedural direction the Board of Inquiry might make.)

Signature: Date:

Signature: Date:

(Signature of submitter, or person authorised to sign on their behalf, is required. Note signature is **not** required for electronic (email) submissions. If this is a joint submission by two or more individuals, each individual's signature is required.)

ENVIRONMENTAL PROTECTION AUTHORITY

Submitter name (please insert): _____

Additional important information

Note: A copy of this submission form must also be sent to the applicant, the New Zealand Transport Agency, as soon as reasonably practicable after you have served your submissions on the EPA:

Deepak Rama
NZ Transport Agency
Private Bag 106602
Auckland 1143

Or email: waterview.connection@nzta.govt.nz
Or fax: 09 969 9813

I/we have sent a copy of my/our submission to the NZTA as required under section 149E(3)(b)(ii) (please tick ✓) ☐

Information updates »

Correspondence from the EPA to submitters will be sent by email, or hard copy, as noted on the first page of this submission form. All information will also be available on the EPA website, www.epa.govt.nz.

Published in September 2010 by the Environmental Protection Authority
PO Box 10720, The Terrace
WELLINGTON 6143

Publication number: EPA 15

APPENDIX I

Submission Form – Origin Unknown

Submission on Waterview Connection proposal

To: Waterview Connection Proposal
Environmental Protection Authority
PO Box 10362
Wellington 6143

Email waterview@epa.govt.nz

Copy to: Deepak Rama
NZ Transport Agency
Private Bag 106602
Auckland 1143

Email waterview.connection@nzta.govt.nz

From

Full name		
Postal address		
Phone numbers	Home Mobile	
Email		

Submitter's preference for further communications:

Submitter Position:

Submitter name (please insert) .....

Provisions to which the submission relates are:

Topic No	
Location/sector	
Consent numbers	
Provisions of concern	

Topic No	
Location/sector	
Consent numbers	
Provisions of concern	

Submitter name (please insert) .....

Our submission is:

Topic No	

Topic No	

I seek the following relief:

Topic No	

Submitter name (please insert) .....

Topic No	

I do not wish to appear, or be represented at, the hearing

I have supplied a copy of this submission to the New Zealand Transport Agency

.....
Signed (not needed fro email submission)

(Name of submitter)