ENABLING DEVELOPMENT: THE IMPACT ON RESIDENTIAL AMENITY

A Survey of the Experiences of Affected Parties under the RMA

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Abstract

The majority of resource consent applications for land use under New Zealand's Resource Management Act 1991 are not publicly notified. This enables development, through the efficient processing of applications considered to be of minor or localized effect. However written approvals may be required from all persons the consent authority considers adversely affected by such applications. If these approvals are not forthcoming, the application is then subject to "limited notification", and notified, if at all, only to affected parties. A study was undertaken to determine what influences people to give or withhold such written approval, and what were the outcomes for those people. The study sought to discover whether responses within the process mirror wider environmental issues. In 2008 a questionnaire was sent to a sample of affected parties in Tauranga and the Western Bay of Plenty, and in 2009, most of the respondents were subsequently interviewed. The theoretical framework behind the research is broad and ranges from the current planning context in New Zealand to the underlying philosophical concepts of the freedom of the individual and their rights, environmental justice, reasons and motivations behind planning disputes, including underlying psychological factors and the meaning of place. Whilst some responses were predictable, the extent of negative experiences was surprising, suggesting changes in both process and practice would lead to better outcomes for affected parties.

Key Words: RMA, notification, planning process, affected parties, amenity, public interest, rights, justice, environmental attitudes, environmental behaviour.

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CHAPTER 1 INTRODUCTION

What this Study is About

This study looks at the process of non-notified resource consent applications under section 94[1] (s 94) of the Resource Management Act 1991 (RMA) from the point of view of neighbours of proposed developments. The RMA generally provides for "open standing", under which "any person" can participate in the Act's processes including appeals to higher Courts. However, s 94 is a constraint to the rights of "any person" to participate in the resource consent application process, and limits standing in certain circumstances to those deemed to be potentially adversely affected. In this study the term 'affected parties' is used to describe such persons. Where a resource consent application is not notified under s 94, their written approval is sought. This study is limited to affected parties who are private persons because very little attention has been paid to this group. Affected parties who are statutory bodies, organizations, businesses, and tangata whenua interests are excluded from this study. This study focuses on the human response to developments that may affect the quiet enjoyment of private property in a neighbourhood, with particular regard to residential amenity.

Research Objectives

The research question under consideration in this study is:

> *What influences persons whose written approval is sought under the notification provisions of the RMA, in deciding whether to give their approval, and what are the outcomes of that process for those persons?*

This study seeks to investigate whether the reasons for giving or withholding consent is related to the extent to which people may be personally affected, or whether their attitudes about the environment generally are reflected in any way. The study also sought to identify whether, and to what extent, individuals felt pressured to give written approval, and how the final outcome of a development impacted on their lives.

Specific research objectives were

- To explore experiences of the s 94 written approval process including affected parties' knowledge and awareness of the planning system

[1] All references are to s 94 of the Act prior to its amendment in 2009. A brief discussion of the effect of the 2009 Amendment can be found in Appendix 3.

- To examine affected parties contact and relationship with the developer and council (if any)
- To determine what factors influenced a decision to give or withhold written approval
- To determine the needs of affected parties
- To explore any potential improvements to the process
- To reflect on whether responses within this process mirror wider environmental issues including public participation and concerns for the environment.

Whilst the broader context of third party participation is an important underlying concept, for the purpose of this study, only participation as it relates to developments in a person's residential locality is considered. This study looks only at subdivision and land use consents in the territorial authority context and for convenience, this report refers only to district and city plans ('plans').

Chapter Outline

The current planning context in New Zealand and the legal background to s 94 of the RMA and other relevant legal provisions are discussed in Chapter 2. The theoretical framework behind the research question is explored in Chapter 3. Chapter 4 sets out the Methodology followed. This is largely a qualitative study, with the primary methods used being a questionnaire completed by affected parties followed by a subsequent interview. The Results are presented in Chapters 5 and 6, nd in Chapter 7 the results are discussed and conclusions drawn.

CHAPTER 2 LEGAL CONTEXT

Introduction

This study deals only with the law as amended in 2003. Under the 2003 amendment to the RMA, where written approval is withheld, the application is only notified to affected parties, not to the wider public. A discussion of the 2009 amendment is found in Appendix 3. This chapter considers the RMA context and key provisions of the Act relating to affected parties, including relevant case law. Side agreements and the possible implications for affected parties are also considered.

Background to the RMA in Relation to Affected Parties

The RMA arose from a period of rapid change in the 1980s. It incorporated conflicting paradigms: the market-driven "enabling", effects-based approach; the concept of sustainable management that implies limits to development; and extensive third party rights. The economic and political climate at the time of enactment was dominated by free market thinking that associated liberalization of development opportunities with the promotion of private property rights. The internalization of environmental effects was portrayed as an economic approach to environmental management: "...ensuring the use [of resources] does not infringe the property rights that others...have in the resource" (Easton. 1998:6). The expectation was that "developers face prices which reflect full environmental costs" (Memon & Gleeson, 1995:118). Section 9 of the RMA expressly permits all land uses unless they are specifically controlled in a district or regional plan. Buhrs and Bartlett (1993) see s 9 and the consent process, as a strong presumption favouring property rights and privileging business (Buhrs & Bartlett, 1993:129). Activities are controlled on the basis of effects, and the onus is on the community and decision-makers to prove adverse effects are likely to arise. Nevertheless, there has been ongoing criticism from business and property interests who claim RMA rules and processes involving third parties cause delays, increase costs, and overly curtail private rights (Young, 2001).

The relevance of the socio-economic and political context of the RMA to affected parties is two-fold. Firstly, the predominant paradigm within which decisions are made, is one of enabling economic development. Serious challenges to local development are

likely to result in a political backlash from vested business interests (Buhrs & Bartlett, 1993:88). The sustainable management purpose of the Act set out in section 5(2) incorporates enabling "people and communities to provide for their social, economic, and cultural wellbeing", establishes a potential conflict between the well-being of "people" (the affected parties and/or the developer) and "communities" (the residents of an area and/or the economic environment or services provided by the developer). Secondly, although the concept of sustainable development was gaining ground internationally when the RMA was evolving, the Act did not follow that model, and no social justice strand was incorporated (Memon & Gleeson, 1995:110). The significance of this is that the Act contains no specific protection for those adversely affected by development except for the general third party rights. Although the Act liberalized third party rights, those rights are restricted under s 94. Ironically, the enabling of property development rights was not accompanied by enhanced rights for other property owners affected by such development.

It could be argued that the overall environmental safeguards envisaged in s (5) (2) (c) of "avoiding, remedying, or mitigating any adverse effects of activities on the environment" is the ultimate mechanism to protect the interests of affected parties, given that "environment" is defined very broadly[2] to include people and communities, amenity values and wider social, economic, aesthetic, and cultural conditions. The potential conflict between environmental protection and increased development opportunities was recognised from the Act's inception:

> The Act is intended to liberalize the strict planning regimes of the past while at the same time ensuring high standards of environment protection are maintained. These objectives contain inherent potential for conflict which will call for sophisticated decision-making (Randerson, 1992: 464-5).

The Planning Under a Cooperative Mandate (PUCM) project has found that most plans do not meet the expectations of the RMA, relying on traditional approaches that were unlikely to achieve the goal of sustainable management (Day et al, 2003:45).

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[2] "Environment" includes—
(a) Ecosystems and their constituent parts, including people and communities; and
(b) All natural and physical resources; and
(c) Amenity values; and
(d) The social, economic, aesthetic, and cultural conditions which affect the matters stated in paragraphs (a) to (c) of this definition or which are affected by those matters

These authors report that economic growth is promoted to maintain levels of service, and this pressure for development conflicts with the promotion of environmental quality (Day et al, 2003:46). The fact that very few applications are declined[3] suggests the facilitation of economic development under the Act.

An overview of case law[4] suggests the concept of sustainable management takes priority over private property rights,[5] and by implication, the rights of affected parties. The Courts have interpreted section 5 of the Act as requiring an overall broad judgment of whether a proposal would promote sustainable management and allows for the balancing of conflicting considerations in terms of their relative significance or proportion in the final outcome (*Trio Holdings v Marlborough DC*; *North Shore CC v Auckland RC).*[6] However, the prevailing view (Milligan, 1998; Skelton & Memon, 2002) is that most of the matters in Part II[7] of the Act are principally anthropocentric in that they relate to the social, economic and cultural wellbeing of people and communities (*Long Bay-Okura Great Park Soc Inc v North Shore CC*).[8] The Court has implied that peoples' interests *can* be overridden in the interests of the community: "We note that the Act differentiates between people and communities. We consider peoples' interests … are not to be submerged in the interests of the community without good reason" *(McNamara v Tasman DC).*[9] What concerns affected parties, is what constitutes "good reason".

Of particular relevance to affected parties are two provisions in Part II: Section 7(c) "the maintenance and enhancement of amenity values"; and (f) "maintenance and enhancement of the quality of the environment". Section 7 specifies that "*particular regard*" shall be had to the matters of s 7. Such matters must be

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[3] In 2007-8, 0.74%, or (385) applications were declined (Ministry for the Environment (MfE(b)), n.d.).
[4] Case law considered in this study was accessed from Brookers Online Commentary www.brookersonline.co.nz and http://www.qp.org.nz/consents/notify/case-law/index.php on 8 September 2009. To avoid in-text clutter and to aid readability, references for legal cases in this chapter are cited in footnotes.
[5] *NZ Suncern Construction Ltd v Auckland CC* (1997) 3 ELRNZ 230; [1997] NZRMA 419 (HC); *Falkner v Gisborne DC* [1995] 3 NZLR 622; [1995] NZRMA 462 (HC); *Curtis v Hutt CC* EnvC W065/99; and *Bay of Plenty RC v Western Bay of Plenty DC* (2002) 8 ELRNZ 97 (EnvC).
[6] *Trio Holdings v Marlborough DC* W103A/96 (PT); *North Shore CC v Auckland RC* A 86/96.
[7] Part II of the RMA contains the Purpose and Principles which are fundamental to all decision-making under the Act.
[8] *Long Bay-Okura Great Park Soc Inc v North Shore CC* EnvC A078/08.
[9] *McNamara v Tasman DC* W072/99, 4 NZED 766 para 124.

recognised as important, be considered, and carefully weighed in coming to a conclusion,[10] but are of less weight than the requirement to "*recognise and provide for*" in section 6, or the overall purpose of section 5. Amenity values (s7 (c)) are defined in section 2 as "those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes". These values relate most closely to the environment and the concerns of affected parties.

If an effect is permitted under the plan, neighbours must accept it:

> Private landowners and in particular, residential owners, should not be required to suffer amenity detraction for the public good unless the use which may cause detraction is one contemplated as a neighbour by the District Plan in which case the resident must be prepared to accept that potential next door activity. However, the detraction if any must be reasonable: that amenity values are protected from adverse impacts (*Marlborough Hockey Assn Inc v Marlborough DC* (1992)).[11]

Affected parties are often concerned about visual effects, and the Court has confirmed that the aesthetics of a development is a relevant and indispensable concern for planning (*Urban Auckland v ACC)*[12].

Case law relating to Part II is extensive and shows a tendency to reject community concerns, in favour of large developments seen to be in the public interest.[13] For developments of lesser public significance, more weight is given to amenity values, such as protecting future residential development from expansion of a neighbouring pig farm (*Wilson v Selwyn DC*).[14] In general, case law seems to favour the interests of those who will benefit from new development.[15] These interpretations of the law are particularly relevant to affected parties.

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[10] *Gill v Rotorua DC* (1993); *Marlborough DC v Southern Ocean Seafoods Ltd* [1995].
[11] *Marlborough Hockey Assn Inc v Marlborough DC* (1992) 1 NZRMA 274 (PT) p10.
[12] *Urban Auckland v ACC* CIV2004-404-407 paras 70-73.
[13] *Waihi Gold Co v Waikato RC* A146/98, 4 NZED 169; *Genesis Power Ltd v Franklin DC* A148/2005; *Land Air Water Assn v Waikato RC* A110/01, 7 NZED 26.
[14] *Wilson v Selwyn DC* (2005) 11 ELRNZ 79; [2005] NZRMA 76 (HC).
[15] *Marlborough Ridge Ltd v Marlborough DC* (1997) 3 ELRNZ 483, [1998] NZRMA 73; *Ohope Point Developments Ltd v Whakatane DC* EnvC A050/05.

An important provision of the Act is s 77B (1) under which permitted activities can be carried out without resource consent and hence no consideration of affected parties is required. Section 77D provides for rules to specify whether certain applications for controlled or restricted discretionary activities can be made without serving notice on affected parties. Section 10 allows for certain existing authorized uses that are no longer compliant to continue under certain circumstances under existing use rights. Existing residents have rights to the levels of amenity provided for in permitted activity rules. Applications for resource consent (Section 88(2)(b)) are required to include an Assessment of Environmental Effects (AEE) in accordance with Schedule 4. Clause 2 of Schedule 4 refers to a broad range of possible neighbourhood effects, therefore potential effects on affected parties should be documented as part of the AEE.

Notification Provisions in the RMA

Sections 93 and 94[16] require a number of decisions to be taken by consent authorities when a resource consent is being processed. Firstly, are the effects minor? If the answer is 'no', the application is to be publicly notified. Secondly, if the effects are minor, who, if any, may be an adversely affected party? Finally, have all the affected parties given written approval? If not, the application is subject to limited notification to the affected parties, including those who have given written approval.

Section 93 of the RMA sets up a presumption in favour of public notification of resource consent applications i.e. the Act requires consent applications to be notified, unless the application is for a controlled activity,[17] or if the consent authority is satisfied that the adverse effects will be minor. Despite this, in 2007-8, only 3.8% of applications to district councils were notified in some way, up slightly from 3.6 % in 2005-2006 (Ministry for the Environment (MfE)(a), n.d.).[18] The

[16] See Appendix 1 for full text.

[17] Controlled activities are not considered in this study. Consent must be granted for a controlled activity, subject to conditions relating to matters in the district plan specified as being under council control.

[18] The proportion of all applications notified (both notified and limited notified), was the highest in 10 years, at 6.7 per cent (4.7% of applications publicly notified with 1.9 % notified to affected parties only (limited notification)). Increasing notification by unitary authorities has largely caused this change. In 2007-8 a total of 48,504 non-notified consents were processed (MfE(b), n.d.). The number of affected parties is not known. Although some of these consents would have been processed under plan provisions not requiring written approvals, the number of affected parties is still assumed to be substantial. (MfE(b), n.d.).

exceptions to public notification are seen as fostering the 'enabling' philosophy of the Act, by limiting the notification of resource consents considered to have only minor effects (Daya-Winterbottom, 2002:21; Rego & Davidson, 2003:10): "Dealing with a resource consent on a non-notified basis is for the benefit of the applicant" (*Bella Vista Resort Ltd v Western Bay of Plenty District Council).*[19] Non-notification is sought by applicants to achieve a decision more quickly, to avoid the costs of a hearing, which is more likely if a consent is notified, and to avoid the risk of appeals to the Environment Court from any submitters:

> If the number of people whose views the consent authority has to consider can be restricted, the greater the control over the process which can be exercised by the land owner or developer. The costs and delays of appeals are additionally avoided *(Sheppard and Ors v North Shore City Council).*[20]

As a precursor to the s 94 process, consent authorities must *satisfy* themselves that any adverse effects are minor, and to achieve this they need to have adequate information about the potential effects (*Westfield (New Zealand) Limited v North Shore City Council).*[21] Consent authorities can request further information under s92 of the Act if they consider information provided with an application is insufficient or unreliable.

In case law, "minor" is defined as meaning lesser or comparatively small in size or importance[22] but a minor effect is more than *de minimis*, which is described as being "so trifling that the law should regard it as of no consequence" (*Rea v Wellington CC),*[23] and is a much more stringent test than whether the adverse effect is minor.[24] Although a council cannot take into account positive effects from the proposal when considering whether the effects will be minor, it can consider any mitigating factors, including proposed conditions for possible adverse effects.[25] Also relevant to the consideration of minor effect is the definition of "effect" (s 3),

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[19] *Bella Vista Resort Ltd v Western Bay of Plenty District Council* [2007] 3 NZLR 429 Robertson J para 27.
[20] *Sheppard and Ors v North Shore City Council* (HC, Auckland, M1791-SW00, 1 May 2001) p23.
[21] *Westfield (New Zealand) Limited v North Shore City Council* [2005] NZSC 17.
[22] *Elderslie Park Limited v Timaru District Council* [1995] NZRMA 433 (HC, 24 February 1995).
[23] *Rea v Wellington CC* (2007) 13 ELRNZ 185; [2007] NZRMA 449 (HC) para 10.
[24] *Progressive Enterprises Ltd v North Shore CC* [2006] NZRMA 73 paras 54 and 62.
[25] *Bayley v Manukau City Council* [1998] NZRMA 396 (HC, 19 May 1998); [1999] 1 NZLR 568 (CA, 22 September 1998).

which includes cumulative effects. Although effects of individual applications may be minor, the cumulative effect of numerous small applications could be significant (Harris 2004:142). As noted by the High Court, the initial assessment of the level of effects is significant, as those deemed to have minor effect will not be publicly notified: "In effect, the consent authority ... is making a decision to deny the public (or a particular member of the public) the right to be heard, without giving to them any opportunity to influence that decision".[26]

Under s 94, if an application is not to be notified, written approvals are required from all affected parties. If these are not forthcoming, notice is served on all those the consent authority considers may be adversely affected, even if some of those persons have given written approval. This has become known as 'limited notification', introduced in 2003 and means that only affected parties can make a submission and have appeal rights. However, if an affected party has given written approval, and does not revoke that approval prior to the hearing or prior to the decision being made if there is no hearing,[27] they are excluded from the process, as s 94A(c) and s 104 (3) (b) state that a consent authority *must not have regard to any effect on a person who has given written approval.* Parties who have given written approval have no right of appeal, including on conditions. Although the Act distinguishes between effects on the environment (s 93 (1), s 104 (1) (a)), and effects on persons (s 94(1), s 94A (c)), in practice it may be impossible to draw such a distinction (PCE, 1998:46). However, recent case law states that consent authority does not have to ignore effects on the land which the person who gave written approval owned or administered, if the land in question was a public reserve of great significance.[28] If a person "adversely affected" by a "minor effect" does not provide a written approval, a hearing is required, and it is at this point that the assessment of minor effects can be contested.

The primary decision for implementation of s 94 is the determination as to who may be adversely affected. In *Northcote Mainstreet Inc v North Shore CC*[29] the

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[26] *Videbeck v Auckland City Council* [2002] 3 NZLR 842, Heath J 853.
[27] S 104(4).
[28] *Royal Forest and Bird Protection Soc of New Zealand Inc v Kapiti Coast DC* (2009) 15 ELRNZ 144, [2009] NZRMA 302 (CA)).
[29] *Northcote Mainstreet Inc v North Shore CC* 2006 (CIV-2004-404-6062), High Court.

Court ruled that "may be adversely affected" meant that the person had to have the potential to be adversely affected, directly or indirectly by the proposed activity. In determining who is adversely affected, the High Court has held that a liberal approach to standing is appropriate where potential damage to the environment is an issue.[30] Ownership or occupation of proximate land is not essential to qualify a person as adversely affected, but persons have to be adversely affected in an environmental sense (*Progressive Enterprises*). However, s 94B (3) provides that a person must not be treated as being adversely affected if it is unreasonable in the circumstances e.g. they cannot be located.

A recurrent theme through notification cases is an emphasis on the underlying public participation scheme of the Act.[31] Notification has a public interest component in achieving the purpose of the Act: "The issue …is not only a question between conflicting private interests; there can often also be a public interest in achieving the purpose of the Act which transcends the private interests".[32] The High Court cautions against assessing potential adverse effects without considering the views of those who may be affected (*King v Auckland CC).* If there is any real doubt, the application should be notified (*Westfield; Progressive Enterprises).* Thus the Courts' approach to who is an adversely affected party has been conservative, and focussed on environmental effects. To date it has incorporated *potentially* affected parties, is not confined to immediate neighbours, and emphasizes the importance of natural justice.

The responsibility for obtaining the approval of affected persons lies with the applicant, not with the council. Nevertheless, it is the council's responsibility to determine who it considers to be affected and to determine whether all such persons have given approvals. The council is not expected to investigate the written approvals it receives but it has a duty to satisfy itself as to what approval is

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[30] *Quarantine Waste NZ Ltd v Waste Resources Ltd* 02/03/94, Blanchard J, HC Auckland CP306/93, [1994] 12 NZRMA 529, 3 NZPTD 205.

[31] *Murray v Whakatane District Council* [1999] 3 NZLR 276 (HC, 2 July 1997) p51. Also *Bayley; King; Society for the Protection of Auckland City and Waterfront Incorporated v Auckland City Council* (HC, Auckland, M1031-SW00, 19 September 2000, Morris J); *Vining v Nelson City Council* (HC, Nelson, CP 23/99, 16 November 2000, Gendall J); *Videbeck v Auckland City Council* [2003] NZRMA 113 (HC, 27 September 2002).

[32] *Australasian Conference Association v Auckland City Council* (1992) 2 NZRMA 104 (PT) p10.

being given *(Troughton & Ors v Western Bay of Plenty District Council).*[33] All written approvals are inherently conditional, in that they are only approvals for the proposal as presented to them. Therefore

> It is possible for written approvals to be given subject to conditions, including a condition that the applicant must seek consent subject to certain conditions. It would appear to follow that any consent granted on a non-notified basis otherwise than subject to such agreed conditions would be invalid (Nolan 2005:250).

A conditional written approval signals to the consent authority which aspects of the proposal are determinative for that approval to remain valid. If a consent authority is not prepared to accept the conditions on a conditional approval, limited notification would be required. However, some consent authorities, including the ones in this study, do not accept conditional approvals. The High Court has quashed consents issued that were significantly different from the proposal given written approval. *Troughton & Ors* concerned an application where written approvals were given for an exclusive home stay and restaurant with occasional weddings, whereas the consent that was granted was for a function centre with up to 50 functions a year, and a subsequent consent for a new building from which it would operate, under the guise of a change or cancellation of a consent condition. That case is of particular relevance to this study, not only in that it took place in the study area just prior to the applications in this study, but also in the similarity of circumstances to one or more of the study applications.

S 94A(a),[34] together with s 94B(3)(a) establish what has come to be known as the permitted baseline:

> ...the existing environment overlaid with such relevant activity (not being a fanciful activity) as is permitted by the Plan. Thus if an activity permitted by the Plan will create some adverse effect on the environment, that adverse effect does not count in the section 104 assessments.[35]

Therefore, the consent authority may disregard an adverse effect if the plan permits an activity with that effect, or if it is a restricted discretionary activity, to disregard

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[33] *Troughton, Smith & Thirwell v Western Bay of Plenty District Council* (HC, Rotorua, CIV-2003-470-238, 18 February 2004, Keane J).
[34] See Appendix 1 for text of S 94A and 94B.
[35] *Arrigato Investments Ltd v Auckland Regional Council* Court of Appeal [2002] NZRMA 481 p29.

an effect if it does not fall within a matter specified in the plan for which discretion has been reserved.[36] This legal framework therefore allows for minor adverse effects on affected parties. Nolan (2005) points out that the broad definitions of "effect" and "environment" in the Act suggest the need for a thorough assessment of whether the effects of an application are strictly comparable with a permitted activity. The implication of the permitted baseline for affected parties is discussed in Chapter 7. Application of the permitted baseline is not mandatory, to provide for situations where there is no credible baseline for comparison, or where matters of national importance are more compelling.

Side Agreements

When seeking written approval, an applicant may enter into a 'side agreement' or private arrangement with an affected party to undertake certain actions or provide monetary or other compensation in return for the written approval. Although outside the RMA process, the practice is accepted in law[37] and is seen by some as normal operation of the market (Easton, 1998:6). The major concern with side agreements is that they may not be effects-based and may encourage on-going adverse environmental effects at the expense of the wider environment and community, including future generations, especially as a consent authority cannot consider adverse effects of a proposal on a person who has given written approval (Miller, 1997).

Enforcement of side agreements is through the civil courts, and from the affected parties' point of view, leaves them without the overarching enforcement powers of a consent authority that would apply to consent conditions. Side agreements may not survive ownership changes (Cosslett et al, 2004:20).

In 1998 the Parliamentary Commissioner for the Environment (PCE) investigated side agreements and concluded that "there is enough uncertainty over the potential environmental management impacts ...that they should not be ignored" (PCE 1998:iii). However, the lack of information about such practices precluded the PCE

[36] *Queenstown Lakes District Council v Hawthorn Estate Limited* (Court of Appeal, CA45/05, 12 June 2006.
[37] *Mackay v North Shore CC* W146/95, 1 NZED 54; *BP Oil NZ Ltd v Palmerston North CC* W064/95, [1995] NZRMA 504, 508, 4 NZPTD 380.

investigation from assessing the actual environmental effects (PCE 1998:45). The PCE considered that side agreements are about satisfying private rights rather than good environmental outcomes (PCE 1998: 46). For affected parties there are inherent risks that, regardless of a side agreement, the application may be modified to their disadvantage at a later stage of the process (PCE 1998:34). Recommendations from the PCE included rigorous evaluation of the AEE and imposition by consent authorities of appropriate conditions to mitigate any adverse environmental effects (PCE 1998:46).

Summary

Hailed as ground-breaking environmental law, the RMA contains inherent conflicts between economic growth, and effects on individuals and the environment. Its sustainable management approach lacks the social justice element inherent in sustainable development. In practice, applications are usually granted, as pressure for economic growth prevails. Private agreements may result from an applicant seeking written approval, and have attracted criticism for allowing the buying of consents. Side agreements are difficult to enforce and create risks for the affected party and the environment. Private property rights are subservient to sustainable management.

Consideration of adverse effects on affected parties is dictated by the planning context, such as whether similar effects are permitted in the plan, or whether council has reserved discretion to control certain effects. Public notification is not required when the effects on the environment are considered minor, and non-notification is the norm. However notification is required to any person who may be adversely affected. No notification is required if all adversely affected persons have given written approval.

CHAPTER 3 LITERATURE REVIEW

Introduction

The research question set out in Chapter 1 raises broad and complex theoretical issues at the heart of planning. The two primary themes are (i) justice in planning and (ii) motivation for behaviour. The first theme, justice in planning, incorporates the rationale for state intervention in people's affairs and the notion of the public interest; principles of justice, and the nature of planning, property and third party rights. The second theme encompasses the meaning of place, underlying reasons why people support or oppose developments in their neighbourhood, and the NIMBY[38] syndrome.

The Planning Context

Planning has traditionally been seen as compensating for failures of the market to achieve social and economic goals, and regulation of land development was justified on this basis, as being in the public interest. In the late twentieth century, the influence of this view waned in the face of global, neo-liberal, market-driven challenges, and lead to a contraction of government regulation. Economic growth is seen as necessary for greater prosperity and to meet the needs of rising populations. Advocacy for property rights and the debate on the public interest continues. However, there has also been a rapidly growing movement for ecological sustainability and a new paradigm of sustainable development has emerged. Planning is still seen as having a significant role in correcting free market weaknesses. This study explores whether, at the neighbourhood level, the process for enabling development is a fair one which achieves the goal of controlling adverse environmental effects and upholds the rights of affected parties.

[38] The acronym NIMBY stands for 'Not In My Back Yard' and is discussed later in this chapter.

Justice in Planning

Theoretical Approaches to Planning

The rational-comprehensive approach to planning forms the core structure of western planning systems (Alexander, 1992), although it has fallen out of favour with many planning theorists (Friedmann, 1987; Healey, 1997; Campbell, 2002; Sandercock, 2004) who propose more communicative approaches. The rational comprehensive paradigm applies a scientific and technical approach by impartial experts, to optimise the use of resources and maximise the overall public benefit. In New Zealand, the rational approach has been modified to accommodate public participation.

In Communicative and Collaborative planning (Healey, 1997), the planner seeks to hear all the voices in the community, not just those with economic and political power, and to promote approaches that compensate for power and knowledge imbalances. Thus, decision-making should be through a consensus process requiring active participation of stakeholders and redistribution of power from institutions to citizens in whose interests they supposedly act. Power relations are transformed by creating opportunities for undistorted communication that acknowledge diverse interests and forms of knowledge. Under this paradigm, the planner becomes a 'critical friend' (McGuirk, 2001:198) who manages access to information and the communication process, and mediates outcomes. Ellis et al (2007) emphasize the importance of power, saying that "it is not the 'truth' that wins the debate, but those who are able to best assert their narrative into public discourse emerge as dominant parties" (Ellis et al, 2007:522). Flyvbjerg (1998) and Pløger (2001) have shown how political reality can defeat the collaborative ideal, expressing the Foucaldian idea of power being present in every social action, including the planning process. Studies of participation processes suggest that there is a tendency for certain groups ('powerful voices') to dominate and be motivated more by instrumental participation than by other rationales, and participation can become status quo-supporting rather than consensus-building (Ellis, 2004b:1552, 1554). Campbell and Marshall suggest that for minorities, 'voice' is not sufficient

and some (e.g. Sandercock, 1998) advocate direct action instead (Campbell & Marshall, 2000:327).

Rawls (1993) and Habermas (1984) uphold the freedom, equality and rights of the individual, but also acknowledge the plurality of modern society (Campbell & Marshall, 2006). Rawls (1993) advocated "justice as fairness" developed under a "veil of ignorance"[39] (Low & Gleeson, 1997:35). Habermas (1984) proposed free and equal "discourse ethics", where communication was not distorted[40] by technical expertise (Tait & Campbell, 2006:493). However, Campbell and Marshall (2006), claim these concepts are too idealistic (Campbell & Marshall, 2006:239 & 249) and criticise Rawls and Habermas for avoiding the key area of conflict - the nature of the good (Campbell & Marshall, 2006:244-246). Campbell says that if the liberty of the individual should only be limited for the sake of liberty this seems to "rule out the possibility of justice in relation to spatial and place issues because of the irreconcilability of individual interests" (Campbell, 2006:94). Low and Gleeson (1997) claim that a just system is more proactive than a tolerance of difference, and is not the same as a consensus (Low & Gleeson, 1997:25). As free riding is rational, these authors say controls applying to everyone are required (Low & Gleeson, 1997:36-7). Post-positivist theorists (Allmendinger, 2002) portray a more complex world with multiple perspectives, and no unifying truth. Planning decisions require the application of value judgements — "making ethical choices over issues which are ...highly contested. Planning is therefore, profoundly concerned with justice" (Campbell & Marshall, 2006:240). In this study the justice of the s 94 process and it's outcomes for affected parties are considered, and the tension between the rational and communicative approaches to planning are highlighted.

Beatley (1994) sees justice in planning as a matter of ethics and he considers planning based on "narrow technical, economic or legal terms" (Beatley, 1994:4) as unethical. According to Beatley, the relevant ethical questions[41] are

[39] Principles agreed in the absence of information about one's own personal circumstances.
[40] Undistorted communication is comprehensible, true, right and sincere.
[41] These are further discussed in Chapter 7, p109.

1. Defining the relevant moral community (geographical, temporal and biological).
2. The extent and nature of ethical obligations (whether to maximise social utility, prevent harm to individuals and the community or protect the rights of the individual).
3. The moral grounds of an ethical standard based on Rawls 1971 "veil of ignorance".
4. The process decisions should be made by (representative or participatory). (Beatley, 1994:14-15).

For Alexander (2007), the key normative values are democratic participation, social justice, and human dignity (Alexander, 2007:121). In New Zealand, the basis of planning decisions is representative democracy. Social justice and human dignity are not concerns of the RMA beyond the principle of equitable application of the law. Nie (2003) takes a pragmatic approach suggesting that where values are the fundamental basis of conflict: "instead of debating ...until we are blue in the face, let us instead just walk the ground and tell each other what we like and do not like and then see what happens" (Nie, 2003:335).

Essentially, environmental justice is about social fairness in which rights to participate in the decision-making *process* and rights to a healthy environment are central i.e. both substantive and procedural outcomes (Campbell & Marshall, 1999; Ellis, 2000:209; Miller, 2006:3).

The Public Interest

Ellis defines public interest as authorities acting impartially to uphold broad societal goals over narrow sectional interests (Ellis, 2000:204). However, some consider there is no real singular overriding public interest (Hillier, 2003; Moroni, 2004), and in a pluralistic society, definitions of what is in the public interest are increasingly subjective, context dependent and value-laden (Allmendinger, 2002). Healey (1997) considers the various 'public interests' are best voiced, tested, debated and resolved through participatory processes, including third party rights. According to Healey (1997), the validity of the public interest is dependent on public acceptance of the merits of planning and its role in upholding shared values, pointing to the need for a robust and clearly articulated public interest rather than

discarding it because of difficulties of definition. Others (Ellis, 2000; Campbell & Marshall 2000) acknowledge the difficulties of defining the public interest but claim

> We do at least know in which direction the good lies. Consideration of issues of value will help planners decide what is significant ... Planning is about finding ways to do something about what is perceived to be unsatisfactory. This is fundamentally a matter of values (Campbell & Marshall, 2000:342).

Illustrating the lack of a singular view of the public interest is Webster's interpretation of the public interest of a neighbourhood in an economic sense, where the public interest is sharing the "attributes of a location—a set of local public goods" and neighbourhood value is reflected in the value of rents and property (Webster, 2003:2592). The actions of others determine visual amenity and value of the street (Webster, 2003:2605). Webster's notion of the vulnerability of every member of the neighbourhood to the outcome of other member's actions could be seen as an underlying concern in this study. Ellis suggests a further aspect of public interest – the sense of civic obligation held by some where challenge of official decisions is seen as a duty fully consistent with the public interest (Ellis 2004b:1556).

Planning decisions involve constraining individual rights and freedoms for the greater good. Constraints on individual freedoms may be economic (intervention in the market), or political (regulation). The market has not generally borne environmental costs (externalities) of individual activities, as this could reduce competitiveness and profitability (Beatley, 1994:37). Market forces may theoretically manage externalities where the number of individuals involved and transactions costs are low, and it is cost-effective to apply market mechanisms (Beatley, 1994:42). Side agreements or 'buying' consents may fall into this category. A major justification for land use intervention is the reduced efficiency of market mechanisms created by transaction costs (Beatley, 1994). Also market forces may not produce equitable outcomes. Basing planning judgments on market values may protect some economic rights, but has been shown to undervalue public goods as well as favouring current over future generations (Beatley, 1994:52).

According to Beatley, negative externalities and application of economic tools constitute a redistribution of wealth because costs can be transferred to others and the environment (Beatley, 1994:39). In the deregulated New Zealand context, planning is justified as controlling the "worst excesses of free-market capitalism," (Memon & Perkins, 2000:17) with the level of environmental effects indicating when the state will intervene to control externalities, albeit in a socio-economic context. Buhrs (2000) notes that in a representative democracy, the state is generally seen as facilitating development and economic growth, and the enabling and non-prescriptive RMA assumes that economic growth and sound environmental conditions are compatible, when in practice they potentially conflict.

The justification for state intervention in individual affairs and property markets based on the public interest (Alfasi, 2006:554; Ellis, 2000:208) comes from utilitarianism. The utilitarian or consequentialist approach allows the rights of one party to be eroded in favour of another's, where the overall public interest is increased as a result (Bentham's (1795) greatest good for greatest number). Planning is largely an expression of utilitarian values arrived at by democratically elected bodies (Hall, 1996 cited in Willey, 2006:372), managing the polarisation between "public good and private interest: between community action and individual autonomy, between civil society and civil liberties, between regulation and markets" (Krueckeberg, 1995:301). Planning is seen as protecting collective interests at the expense of individual rights, but is also seen as promoting some private interests at the expense of others (Forester, 1989; Sandercock, 1998; Yiftachel, 1998 cited in Alfasi, 2006:554). March (2003) points out that there is an assumption that utility is somehow always favoured by fewer governmental controls. This commonly favours new developers over those who may be defending their existing rights (March, 2003:277) such as affected parties on the urban fringe where land use change can be rapid and extensive or where non-residential activities seek to establish in a residential zone.

A key criticism of utilitarianism is the emphasis on cost-benefit analysis, focusing on maximising overall benefits with little regard to who bears the costs and benefits (Dunleavy and O'Leary, 1987 cited in Alexander, 2007:117). Hermansson (2006) questions the ethics of decision-making based on aggregated benefits because this

approach ignores the rights of individuals, who may bear a disproportionate cost (Hermansson, 2006:9, 14). An individual's (or community's) interests can be traded away (sometimes repeatedly) to maximise the benefits of others (Willey, 2006:372). Alexander (2002) rejects utilitarianism as the basis for planning and advocates a substantive norm-based approach coupled with a dialogic process: "This means not basing the decision only on the value or benefit of the project's expected impacts", but also considering the proposal's appropriateness in terms of agreed values and objectives, reflecting prevailing norms (Alexander, 2007:118). He says that incorporating the public interest as a criterion might result in changes to impacts on affected parties He also advocates recognizing the role of planning rights to empower individuals and communities to participate in the planning that affects them (Alexander, 2007: 119-121).

Utilitarianism reflects the underlying principle of s 94 of the RMA, which assumes the greatest benefit is to allow freedom of the individual, subject to minimising harm; where mitigating conditions, and side agreements, are compensation given to those harmed by a transaction by those who benefit from that same transaction (Beatley, 1994:34). The s 94 process combines both consequentialist and deontological approaches, by allowing land development that contributes to the overall social and economic well-being (s 5(a) RMA), and maximising property rights, whilst taking steps to consider particular externalities (avoiding, remedying or mitigating adverse effects) which may impact on the environment or others (the affected parties). To the extent that effects on 'affected parties' are specifically addressed in s 94, it could be said that the New Zealand legislation does endeavour to incorporate both *rights and utility*, however the tension between the detailed rules sought to protect amenity and the freedom to use one's property is likely to be decided according to the dominant political and economic interests at play which ultimately dictate the prevailing public interest.

Rights and the Public Interest

Planning laws for the prevention of harm to others or the environment can also be seen as *a rights issue* – harm imposes on the rights of others and avoiding this is an ethical duty (Beatley, 1994:55). Ellis says a rights approach implies the need for a formal consideration of who bears the costs and whether these result in impacts that

exceed acceptable limits, whereas a unitary public interest implies that the utility of a proposed action can somehow be aggregated irrespective of the distribution of costs and benefits (Ellis, 2004b:1565). Hermansson asserts that the individual's right to be free from harm needs to be acknowledged, promoting a "just procedure" (i.e. dialogic), that includes respect for rights (Hermansson, 2006:9, 14). March (2003) points out that taking a rights-based approach requires starting from the ideal that humans have certain rights that may not be violated—bearing in mind that rights are social constructs (March, 2003:265). He considers that greater utility results from ensuring that all parties achieve a satisfactory outcome (March, 2003:272). March (2003) claims inter-subjective approaches and consideration of effects on all parties contribute to the resolution of rights *and* utility (March, 2003:275). This implies that if consent authorities do not provide for conditional approvals from affected parties, it may limit their ability to fully consider a satisfactory outcome for all.

The Nature of Rights

Although contested (Ellis, 2000:204), and not usually absolute, rights are seen as inviolable and as legitimate claims all individuals have against other individuals or the state, that override other claims (Beatley, 1994:65). Rights are socially constructed, and can be modified over time (Vira, 2001:641). Ellis refers to the mantra "no rights without responsibilities" which implies that certain rights have to be deserved or are qualified in some way (Cranston, 1973 cited in Ellis, 2000:1556). Rights may be include both process (procedural rights) and outcomes (substantive rights) (Ellis, 2004b:1551). Rights are generally associated with the protection of individuals from oppressive authority, and may be used by citizens as "political trumps" when restrictions on them are lack reasonable justification (Dworkin, 1984, page xi cited in Ellis, 2004b).

Individual rights

In an instrumental approach, rights are seen solely as a mechanism for upholding individual interests (Campbell & Marshall, 2000b). Although not necessarily contrary to the public interest, (Ellis, 2000:21) there is a fundamental conflict between rights-based approaches and planning based on the public interest (Ellis,

2004b:1551; Ellis, 2000:214; Willey, 2006:372). Despite procedural rights enshrined in planning legislation, planning restricts landowners' substantive rights to develop their land however they like. Miller (2001) considers that "planning by its very nature is inimical to individual rights...planning's raison d'etre is to allocate land use in the public interest," (Miller, 2001:1899) where the public interest is defined by legislation and planning provisions. Ellis (2000) considers that rights may entrench individualistic and sectional interests, reinforcing, rather than challenging, existing patterns of power (Ellis, 2000:208).

The s 94 process both defines and restricts the individual rights of affected parties, and also implies that any public interest aspects of the application can only be challenged or championed by such an affected party. Beatley considers that communities ought to be able to determine their shape as they see fit (Beatley, 1994:211), but ethical development also considers the effects on other individuals or the larger public, and such community choice may restrict individual freedoms (Beatley, 1994:213). Where planning applications are non-notified, only those in the community who are considered 'affected' have an input into how the community is being shaped. Beatley considers an ethical approach is where basic rights e.g. privacy, lack of discrimination, are not infringed (Beatley, 1994:217-33). Ethical decisions arise when rights are in conflict with one another, and may result in a restriction of rights where there is incompatibility (Beatley, 1994:70; Krueckeberg, 1995:307). The common planning practice in New Zealand of allowing non-residential activities to locate in residential zones, may sometimes lead to infringements on people's personal lives, or a change in the character of a neighbourhood. Resolution of such conflicts requires consideration of ways to accommodate both the conflicting rights, and co-operation of all parties is necessary to achieved this, implying a right to due process (Beatley, 1994:71, 86).

Ellis (2000) argues that the principle of equality is a simpler and more powerful approach than individual rights and rejects a privileged status for property rights. However, he says that rights are helpful to clarify the power of the state in relation to individuals and communities (Ellis, 2000:214). If decision-makers understand that they will be held to account, "rights... have the potential... to help shift the balance of power..." (Ellis, 2000:214). He concedes that sometimes wider social

goals must override local interests, but the grant of rights does not necessarily undermine this principle (Ellis, 2000:215).

Planning rights

The rights of parties affected by plans and planning decisions have implications for property, development and third party rights[42] (Alexander, 2007:113; Willey, 2006:369). Alexander (2007) sees planning rights as a form of institutional right (due process, equity, reasonableness, human dignity), and procedural rights such as the right to appeal harmful decisions (Alexander, 2007:114). Healey (1997) also sees rights within an institutional framework, where the way in which rights are formally specified, distributed, and redeemed, has a significant effect on structuring power relations and governance practices. Healey identifies rights to `voice', `influence', `information', and `challenge'. She emphasises the last of these, as a safeguard against unreasonable actions and failure to provide adequate information or properly acknowledge the diversity of interests (Healey, 1997:291, 296-305). These are *process* rights, generally provided for in New Zealand, providing an individual has the resources to utilise them. Ellis (2004b) considers that procedural rights should consider the broader context of culture, political power, and socio-political relations and emphasizes Pløger's (2001) point that procedural rights do not automatically secure substantive rights, and the outcomes of any rights claims depend on whether those in power accept them.

Campbell and Marshall's Californian study lead those authors to warn that too much focus on process could allow self-interested parties to dominate, leading to substantive matters being overshadowed (Campbell & Marshall 2000:337, 341). Campbell (2006) says that the right to be consulted or heard is only meaningful if others listen to and consider the views being expressed. She says that rights are meaningless in the absence of associated obligations and we need to look at the interdependence of people, common interests, and shared common humanity. Justice in planning should look at the broader nature of rights and the enforcement

[42] Third party rights do not exist in all jurisdictions. In New Zealand, third parties affected by a consent application for a controlled activity have no appeal rights. The lack of third party rights for "non-affected" parties in non-notified consents is of particular concern for community and environmental groups who are not considered to be "affected" by the consent authority. See Chapter 2 for a discussion of the legal rights of affected parties in New Zealand.

of obligations, through institutions acting for the collective good (Campbell, 2006:101). In terms of planning in New Zealand, this would seem to point to recognising the rights and *obligations* of applicants, affected parties, and the community, and implies joint compromises.

Third Party Rights - Citizens Rights in Planning

The broader context of public participation in planning needs to be considered as to whether, and at what point, a line should be drawn between affected parties and the wider public. Third party rights allow parties, other than the applicant, to participate in the planning decision process. Third party rights incorporate concepts of property rights, to the extent that developments' exercise of property rights may impinge on the property rights of others, but also incorporate wider theories, such as rights of participation and justice, expressed in the communicative planning paradigm, as well as concepts of representative democracy (Ellis, 2004b:1549; Willey, 2006:373).

Mill and Rousseau saw participation as essential to democracy, enabling consideration of the public good (Beatley, 1994:243). The extent to which the public should be involved directly in planning decisions is a perennial debate underlying the major conflict in planning, between providing greater efficiency and certainty to development interests, and the desire to empower individuals and communities to influence the shape of their community. Equality and procedural fairness are considered basic rights. Illsley notes that fair processes are frequently more significant to people than fair outcomes, with greater acceptance of decisions when they respect the legitimacy of the decision-making process. He promotes Hillier's (1999) concept of 'fair participation' (Illsley, 2003:265-6), based on the following criteria: voice (people affected by a decision should have the opportunity to have their views heard); use of information (decisions should be based on sound information); fair treatment (procedures should be applied consistently and fairly to all); lack of bias (decision-makers should be unbiased and not be influenced by self-interest).

Healey (1997), Willey (2006) and Ellis (2004b) all consider third party participation in planning is necessary to represent the public interest. Healey's (1997) view is based on the impossibility of the state acting in the public interest in an increasingly fragmented society. Willey (2006) agrees as there may be alternative views to those of the consent authority and the applicant as to what is 'sound planning' (Willey, 2006:382-4) and claims "without the right for third parties to commence appeals... communicative and participatory planning is largely confined to being a rhetorical, vacuous and largely academic debate far removed from the ideal speech situation" (Willey, 2006:386). Ellis considers equal rights are a prerequisite for a legitimate public interest otherwise technical rationality, developers and property rights will invariably dominate planning (Ellis, 2004b:1564). Allowing people to participate in decisions affecting their quality of life (Illsley, 2003:265) and what happens in their neighbourhoods, is important for fairness and equality (Beatley, 1994:242, 244).

On a practical level, developments may have impacts outside the site area, introducing a land use or a scale or form of development fundamentally different to the existing use (Willey, 2006:378, 383). What is considered minor by the council may have significant local impacts for residents (Willey, 2006:377). Third party involvement can lead to an improvement in the quality and extent of information as it allows for local knowledge (Beatley, 1994:242; Ellis, 2000:211; Willey, 2006:378), resulting in better decisions. Participation places pressure on developers to achieve more appropriate outcomes. In Willey's 2006 Victoria study, a leading Melbourne-based planning professional said "If there was not third party scrutiny and ...pressure sometimes you would not get developers being forced to concede things that are reasonable to concede or try to improve their design or try to address other issues" (Vic PC2, 2003, cited in Willey, 2006:376). The existence of third party rights compels developers to engage more fully, sincerely and legitimately with the community, pointing to the inability of planners to achieve the best outcomes for the public interest.

Third party rights allow individual rights to be weighed against collective concerns (Willey, 2006) and encourage greater transparency and accountability from planning authorities, including amending errors in granting approval (Willey,

2006:385). Councils and developers may collude on particular projects, and sometimes the council is the developer. "The most important check and balance on the system is the ability of third party interests to have a say on the outcome. It keeps the system honest" (a Victorian barrister Vic B1, 2003 cited in Willey, 2006:378). As more than 60% of third party appeals in Victoria are upheld either in whole or in part suggests third parties play a substantive role beyond the vexatious and raises questions over the quality of local council decisions (Willey, 2006:383-4). Third party appeals are used by businesses and property interests, as well as private citizens (Ellis, 2004a:5) and do not threaten the overall pattern of economic development (Willey, 2006:381-2). Willey points out that decisions of appeal bodies strongly influence subsequent planning decisions, and without third party rights, the community, as distinct from officials, has no real voice in planning outcomes (Willey, 2006:386).

However some question whether third parties have a legitimate interest, as public participation is already provided for in plan preparation, which defines the public interest (Willey, 2006:379). Therefore third party rights could be seen as unnecessary, interfering with private property rights. It is argued that allowing challenges to planning decisions, assumed to be based on the 'public interest' made by local authorities representing their community undermines the principle of representative democracy (Willey, 2006:372). Third party involvement is not necessarily representative of the community (Beatley, 1994:243-4) and may allow narrow sectional interests ('squeaky wheels') to dominate (Campbell & Marshall, 2000:334) or favour those who already hold power (Sandercock, 1975 in Willey, 2006). Public participation in the planning system is open to abuse and can result in more appeals,[43] delays, costs and uncertainty (Willey, 2006:380). They have the potential to allow 'busy-bodies' or the vexatious and frivolous to unreasonably

[43] In Willey's Victorian study, almost 50 per cent of appeals were lodged by applicants. In the year 2003-2004, 60 per cent of third party appeals were partially or completely successful. Anecdotal evidence suggests that the most common 'successes' for a third party are design modifications, not a complete refusal. The planning authority has powers to award costs against vexatious or frivolous litigants but, in practice, costs are rarely awarded (Willey, 2006:376). [Note that in New Zealand costs against vexatious appellants are likely]. In other jurisdictions with a comparable scope of third party appeals, appeals are typically lodged against 1-2 per cent of all applications. In the Republic of Ireland there are more than 4500 appeals a year, of which nearly 50% come from third parties, 40% of which result in a complete refusal of planning permission and most others with revised conditions (Ellis, 2004b:1556).

interfere in other peoples' affairs where there may be no legitimate public or planning interest, or encouraging NIMBY responses (Willey, 2006:373, 377, 379). This is the rationale behind the New Zealand system of limiting participation in routine development (non-notified consents) to affected parties.

Willey points out that justification for appeal rights for applicants arises largely from common law in that property owners should have a right of redress against official decisions that restrict the use and enjoyment of private property (Willey, 2006:371), and the same arguments justify third party rights (Willey, 2006:370, 373). He concludes that whilst there may be some abuse of the third party system, some property owners have long exploited their right to own and enjoy property, despite any wider environmental damage caused (Willey, 2006:386). Willey proposes limited third party appeal rights, with harsher penalties for frivolous appeals (Willey, 2006:370, 376). Willey suggests that third party involvement be determined (and limited) by the nature of the application,[44] and where development is small-scale, only to those within the immediate neighbourhood should be granted a right unless a party outside this area can show cause (Willey, 2006:385-386).

Affected parties

Ethical land use requires an equitable and fair decision-making process, defined as one in which all those affected by a decision have an opportunity to have their voice heard (Beatley, 1994:242; Miller, 2004; 2006; Morgan, 2000), including those who are *potentially* affected. A fair process includes *directly involving* the affected parties in identifying and evaluating adverse effects (Miller 2006:22). In Willey's Victorian study, planning consultants supported rights for affected parties:

> It would be wrong to have a process which did not give third parties, especially adjoining owners or people in the neighbourhood with a real and direct interest, an opportunity for a say in a proposal that will affect them (Vic PC3, 2003 in Willey, 2006:376).

Alexander (2007), Beatley (1994) and Miller (2004) all consider that meaningful involvement includes input at *early stages* of decision-making including design and

[44] Where there is no increase in the intensity of development or the proposal is merely domestic in nature, there should be no third party appeals (Willey, 2006:385).

any mitigation, as this gives all parties a better understanding of likely impacts. The s 94 process provides for affected parties to be consulted before an application is lodged, although this does not necessarily mean it is at the early stages of development. Miller points out that the participation of affected parties contributes to improved management of effects on those affected (Miller, 2004:7).

Beatley says consideration of affected parties requires attention to imbalances in power (Beatley 1994:257) as individuals can be manipulated, contrary to their interests. Ellis (2000) found that a combination of lack of information and/or its selective use, complexity of the language and process of planning, an inability of planners to uphold the public interest, and influence of power structures, could result in "a complex and subtle but powerful barrier" (Ellis, 2000:209) to involvement in planning. Miller's statement that "Since evaluation of ... impacts depends on the judgments of those being affected, involving these parties is essential to these values being expressed" (Miller, 2004:7) assumes that decision-makers will act in response to the views of affected parties, although this is not always the case, and in New Zealand some consent authorities do not accept conditional approval from affected parties. There is no independent audit of written approvals by the consent authority, and written approvals are sometimes withdrawn. The determination of who is an affected party, and whether or not wider third party rights can be exercised, is highly significant to the exercise of planning rights, and sometimes judicially contested.

Property Rights

Property is a socially created phenomenon under which the state enforces a "bundle of rights" that includes exclusive possession including the right to use, derive income, sell, transfer and exercise of control (Zhu et al, 2007:2349), in return for land taxation (property rates). Zhu et al consider freedom from outside interference is a fundamental aspect of property rights (Zhu et al, 2007:2350). Property rights are seen as fundamental to a person's social, economic, and political well-being and a supportive system of property rights is seen as essential for efficiency, economic growth, and innovation (Lawrence, 2001:634; Zhu et al, 2007:2349). Property rights are designed to protect economic rights (Webster, 2003:2591) and

are a basic instrument of the market economy (Beatley, 1994:194-5; Zhu et al, 2007:2349). The view that market forces and property rights should have priority in the planning process, and that the planning system should provide a basis for economic growth is widespread (Ellis, 2000:212; Morgan et al, 1991:29; Wheeler, 1991). In contrast Vatn (2001) sees property rights regimes as social constructs meant to defend the interests of specific individuals or groups and define who has access to environmental resources, who has obligations, and who has to assume certain types of costs. This interpretation addresses power relations, fairness, and distribution issues (Vatn, 2001:665). Vira (2001) sees property rights as socially legitimised claims to resources, which must emerge from "a social process and are meaningful only to the extent that they are collective recognised" (Vira, 2001: 638-9).

Some view property rights as "god-given", (Alexander, 2007:116) or their rightful entitlements (Hurley & Walker, 2004:1533). However planning is about broader concerns than individual property owners, and is focused on the wider environment and community (Beatley, 1994) including the rights of future generations and the environment. Today the right to exercise control of property is increasingly constrained by the "preventing harm" ethic (Beatley, 1994:205). Planning controls that restrict development rights of individual property owners may protect other land users in the neighbourhood, who may also have property rights claims, from adverse effects generated by particular developments (Zhu et al, 2007:2350). Property interests may not necessarily coincide with the public interest and the traditional view of the sanctity of property rights is no longer a sound basis upon which to reject the participation rights of other parties (Willey, 2006:383).

Cullet (2001) argues that the concept of the exclusivity of property should be replaced by the concept of the common heritage of mankind that allows others rights in the management of environmental resources (Cullet, 2001:662). However any reduction of such rights must be subject to a fair process. Alexander sees property rights as an aspect of planning rights "to be recognized, observed and enforced where appropriate, or, if in conflict, to be balanced against other relevant Planning Rights when necessary" (Alexander, 2007:116). In New Zealand this is

primarily through ss 85[45] and 94 of the RMA. A question underlying this study is whether the process for reconciling competing property rights is adequate.

Arising from the conflict between private and public interests in the use of land is the issue of "taking", or compensation for loss of rights arising from planning restrictions. In New Zealand, the issue of 'lost' property rights by an affected party is only considered by the consent authority to the extent that if an affected party withholds written approval, the consent authority may impose certain conditions to mitigate adverse effects on that person, or in rare cases, decline the application. However, the affected party is not precluded from seeking compensation directly from the applicant in a side agreement as discussed in Chapter 2.

Reverse Sensitivity

Conflict in land use is often based on *expectations* about future use — whether there is to be change, or whether the status quo will prevail (Beatley, 1994:170). This especially applies to residential amenity and lifestyle blocks, where residents hold expectations that "residential" areas will be free of commercial activity, or that country living be quiet and peaceful (McGregor et al, 2007) (although in this study those with working farms also found themselves in conflict with the effects of rural industry). Beatley's view is that expectations should be guided primarily by planning provisions (Beatley, 1994:171). The amenity of private property is a legitimate concern of planning, yet amenity is often intangible and difficult to assess and manage through planning provisions. Some aspects of amenity (overshadowing, yards) are readily quantifiable but assessing 'pleasantness' is more subjective and may concern architectural quality, neighbourhood character, landscape quality, traffic movement, noise or odour (March, 2003:268). Such matters feature strongly in this study as concerns raised by affected parties.

[45] S 85 applies to the making of rules in plans and sets out the parameters for reasonable use of land, restrictions beyond which may warrant compensation under the Public Works Act, or relaxation of control[0]. This essentially amounts to carrying out uses that are permitted under the plan and is considered no further here.

The concept of reverse sensitivity is related to property and the planning rights of existing uses, and arises from the conflict between new activities and existing ones. It is defined as:

> sensitivity... to complaint about environmental impact, reverse sensitivity exists where an established use produces adverse effects and a new use is proposed for nearby land... new uses may be prohibited or limited on the ground of reverse sensitivity in order to protect established uses from having to modify their operation.

(*Affco New Zealand Limited v Waikato DistrictCouncil* (EnvC A36/98; *Winstone Aggregates v Matamata-Piako District Council* 11 ELRNZ 4). Reverse sensitivity is considered an adverse effect under s3 RMA and accompanied by a duty to avoid, remedy or mitigate adverse effects. According to *Winstone Aggregates,* activities should internalise their effects unless unreasonable to do so. Industry must be of considerable economic or social significance to warrant restrictions on the use of adjoining land. In some cases reverse sensitivity is addressed by requiring mitigation measures such as soundproofing controls and no complaints covenants or conditions.

Motivation for Behaviour

Why people object to developments

Most conflicts contain many interrelated factors, but common threads are competing human values (Nie, 2003), especially economic interests. Nie suggests that resource conflicts escalate when they become a surrogate for a larger issue e.g. a wind farm development becomes a surrogate for an energy efficiency debate (Nie, 2003:314). Ellis (2004b) criticises the view that individuals object to development motivated by narrow self-interest (Ellis, 2004b:1552). Whilst he admits most people become involved in the planning system only when it affects their personal interests, he suggests that involvement in planning is connected to deeper held views of citizenship (Ellis, 2004b:1564). He says planners should understand community perspectives and see participants in the process as socially embedded people (Ellis, 2004:1555, 1563) who need to be understood in their broader socio-political context.

This broader context includes the nature of human behaviour. Property rights are frequently central to planning disputes. Property, however, may be more than just an economic resource, and has value as personal space or 'territory' (Edney, 1976:812). Edney's work suggests that the motivation of those claiming property rights, and those 'defending' their neighbourhoods from unwanted developments, could be seen as expressing a basic instinct, integral to both the social system and the psychological states of inhabitants (Edney, 1976:813-58, 821).

NIMBYism

Territoriality could be seen as an explanation for what has been described as the selfish parochialism of NIMBY[46] (Ellis, 2004:1553). The NIMBY opposes something one believes to be good for society, in the public interest, solely because it is located nearby. Dear (1992) criticises the NIMBY syndrome for making it "almost impossible to build or locate vital facilities that the city needs to function" (Dear, 1992:288), whilst acknowledging that such facilities are "unpopular" and "unwelcome" developments, (what Ellis (2004) calls "invasive development" (Ellis, 2004:1554)). Such opposition can result in improved proposals (Dear, 1992:288). Dear sees NIMBYism as an expression of prejudice and discrimination, and a form of turf protection based on perceived threats to property values, personal security, and neighbourhood amenity. He claims there is no evidence that property values are affected by adjacent facilities, which may in fact rise in value, and security concerns vary according to the nature of the development and perceived risk. He reports a spectrum of response from tolerance for certain differences e.g. physical disabilities and old age, to the extent that schools and medical clinics are `most welcome' and landfills and prisons being `absolutely unwelcome'. The type of facility, size, appearance, operation and reputation all affect the level of opposition, and facilities are better received where the outward appearance is neat and tidy and in the same style as neighbourhood (Dear, 1992). A 1989 survey described the typical NIMBY advocate as high income, male, well

[46] NIMBY is defined in the *Oxford English Dictionary* as "1. An attitude ascribed to persons who object to the siting of something they regard as detrimental or hazardous in their own neighbourhood, while by implication raising no such objections to similar developments elsewhere. 2. A person holding such an attitude; an objector to local (esp. building) development."

educated, professional, married, homeowner, living in large city or its suburbs (Dear, 1992). Whilst those demonstrating NIMBY attitudes are generally affluent with access to resources and 'know how', opposition is also motivated by neighbourhood attachment and the desire to protect the use value of one's living space (Cox & McCarthy, 1982, cited in Ellis, 2004:1554).

It has been demonstrated that not many people are in fact NIMBYs in the 'true' sense of the word (Ellis, 2004; Hermansson, 2006). Hermansson considers the term a disparaging one, that suggests self-interest is shameful and should be disregarded. There is an expectation that development should be accepted, even if detrimental, because it is for the public good (Hermansson, 2006). Hermansson sees NIMBY partly as a rights issue, protecting health, property and amenity from harm. She points to the importance of place for an individual's or a group's identity and considers place identity should be given more attention. NIMBYism can be seen as arising from political, economic or administrative failures with such conflict an expression of collective struggles where the marginalised become empowered in a just cause (Ellis, 2004:1554). In his paper, *Rethinking NIMBY,* Lake (1993) argues that the unwanted facilities are needed not by society but by *capital* and the development industry, on which the state is dependent for economic growth and political support. Lake points out that economic growth based on land development makes conflict at place inevitable. Although community opposition has an economic component (property values and protection of one's major investment), it also includes other values, such as protection of amenity, social status, the sanctity of the home, and the protection of the neighbourhood (Lake, 1993). Thus key questions raised by the NIMBY debate are who should pay for the cost or risk of public goods and what are the rights of those living in the vicinity of a LULU.[47] Dear et al (1980) found that the closer residents are to an unwanted facility, the more likely they are to oppose it. As distance increases from the proposed site, neighbours' interest or awareness declines to the point of indifference (Dear, 1992). This phenomenon would tend to indicate where the cost to the local residents will fall (Hermansson, 2006) i.e. on the affected parties.

[47] Locally Unwanted Land Use.

Critics of the NIMBY response, as expressed by Dear (1992), consider that greater education and persuasion of objectors to convince them of a development's social benefits, and legal barriers to opposition, are needed. However Lake argues NIMBYism is an expression of people's legitimate needs and fears and can never be eliminated. Instead, social costs should be borne more by interests benefiting from development as well as a more flexible approach to the points of view of both developers and the community (Lake, 1993), whose relationships would seem to reflect Habermas' 'distorted communication'. The work of Ellis et al (2007) highlights the inadequacy of the NIMBY explanation of objection, as overlooking the complexity of why people may object to a proposal, and suggests its derogatory implications exacerbate conflict (Ellis et al, 2007:536). Hermansson (2006) agrees that there are always other alternatives to unwanted developments, although they may be more costly.

The complexity of motivations

Social-psychological approaches have suggested objectors are motivated by a range of factors apart from financial self-interest, including the perception or fear of health risks, nuisance (traffic, noise), distrust (of institutions and government), or concerns over quality-of-life issues that they can reasonably expect the planning system to take into account. Some may be acting on what they see as a civic obligation to oppose unsustainable development (Ellis, 2004:1554). Ellis (2000) agrees there are a wide range of motivations from altruistic community concern, to carrying out vendettas against neighbours (Ellis, 2000:212). Ellis et al (2007) highlight the subjectivity of responses to development and point to recurring patterns of values: the 'proper' use of specific places; identifying the legitimate 'voice' of a local community, and the relative rights of local communities and 'outsiders'; a breakdown in trust between local citizens and non-local institutions of governance; different perceptions of the local impact of, and response to, national and global issues; and the relationship between expert versus lay knowledge (Ellis et al, 2007:517-8, 522). Some, but not all of these factors are reflected to varying extents in this study.

Communication and Trust

How communication takes place can contribute to conflict. Beatley assumes that both values and ethics can change subject to dialogue and argument, (Beatley, 1994:22) but Nie points to the tendency for adversarial debate that ignores the underlying values, needs, motives, and fears of the participants (Nie, 2003:326). Under the s 94 process, the dialogue between applicant and affected party is not moderated unless the affected party refuses to give written approval, and there is no guarantee that a mediation approach will occur. Views of supporters and objectors may be based on very different language, values, interests and world views, so that they talk past, rather than to one another (Ellis et al, 2007:525). Supporters also display complex reasons for their respective positions, indicating that for many, support is not absolute, but qualified. If positions reflect deeply held values and are influenced by wider ideological positions and worldviews beyond the narrow concerns of the specific proposal, giving people information, on its own, is unlikely to persuade many objectors to drop their opposition (Ellis et al, 2007:531). Ellis et al suggest efforts to counter opposition to projects can be self-defeating and assert that engagement should be an interactive, rather than a one-way, process, with the aim of changing the attitude of developers as much as objectors (Ellis et al, 2007:538).

Councillors have the important functions of monitoring professional input and being accountable for decisions (Campbell & Marshall, 2000:342). However Ellis (2004) found a deep mistrust of the integrity of the local planning system, particularly the role of local councillors, who objectors' saw as pro-development. There was also a tendency to oppose the developers, rather then the development itself (Ellis et al, 2007:537). Ellis draws attention to Habermas's (1970) distinction between `technical rationality' and `practical rationality' whereby decisions arrived at through the objective, technical rationality of the planners will be received in terms of value judgments and political choices (practical rationality) by the public (Ellis, 2004:1555). This coincides with the work of environmental psychologists such as Gifford (1997), who says that non-experts think more in personal and social terms, and have low trust in officials, whereas experts rely on technical and quantitative numerical assessments. Both Gifford (1997) and Ellis et al (2007)

advocate an interactive, participative process where people should be allowed to disagree in good faith, with the aim of reaching common ground to amend a scheme, or find alternative acceptable outcomes.

Psychological factors

The work of environmental psychologists such as Gifford (1997) on relationships, trust, and approaches to knowledge, highlight the relevance of psychology in the planning system. Achieving consensus on 'wicked problems',[48] or 'buy-in' on divisive land use conflicts, is increasingly reliant on collaborative approaches (Innes & Booher, 2004:423) and the building of relationships, in addition to the technical aspects of planning tools. Therefore consideration was given to some of the literature in the field of environmental psychology.[49] Some theoretical approaches to environmental psychology may contribute to an understanding of affected parties' responses to developments in their neighbourhoods. According to Stimulation Theory, individuals adapt to certain levels of stimulation in certain contexts, and when the level of stimulation changes, so may feelings and behaviour. Changed stimulation from more intensive development, including noise, may change the meaning of a place for a person. Control theories state that the more control an individual has, the better off the person is (Gifford, 1997:8). Where an affected party perceives a loss of control over their perceived territory, they may respond negatively. The relevance of Behaviour-setting Theory[50] is that people may respond negatively to changes in the social patterns brought about, or perceived to be brought about, by a proposed development. Integral Theories suggest that understanding the environment assists in understanding behaviour, and that both influence the other. Behaviour-setting and Integral theories may lend support to the importance of context, as suggested by Ellis (2004). Environment-centred approaches consider an individual's emotional or spiritual view of the environment, in terms of instrumental motivation, and aligns with the research

[48] The phrase 'wicked problems' refers to the intrinsic complexity of planning issues (Rittel & Webber, 1973 cited in Alexander, 2002:236).
[49] Environmental psychology is defined as "the study of transaction between individuals and their physical settings. In these transactions, individuals change the environment and their behaviour and experiences are changed by the environment" (Gifford, 1997:1).
[50] Behaviour-setting Theory (Barker 1968, Wicker 1979) describes person-environment interaction in terms of consistent prescribed patterns of behaviour e.g. rules, customs, typical activities occurring in certain places and/or social situations (Gifford, 1997:8).

findings of Ellis (2004) as a relevant motivating factor. Gifford points out that these theories represent multiple paradigms which are not necessarily conflicting, and may be complementary. Gifford (1997:11) notes that environmental psychology sits within the socio-historical context, discussed earlier in this chapter.

The meaning of the environment begins with perception (information gathering) which is selective, and includes utilitarian and aesthetic aspects. Visual amenity is a commonly raised concern when new development is proposed. How a person assesses their environment is influenced by the physical characteristics of the place, aesthetics, emotional reactions, meanings, safety considerations, personal memories, the importance of the place for activities and many other personal factors (Gifford, 1997:55).

The meaning or significance of a place

Place attachment is an affective bond between people and places with particular reference to home or neighbourhood (Altman & Low, 1992 cited in Manzo & Perkins, 2006:337). Place attachment may also arise from ancestral links, history, symbolism of sites, ethnic background, education levels, perceived control including ownership, dispositional anxiety, proximity and degree of environmental activism (Gifford, 1997:64-72, 225-6). Attachment to places will affect people's involvement in their local community, response to changes within that community, or simply as to whether to remain living there (Pretty et al, 2003, cited in Manzo & Perkins, 2006:337). Neighbourhood is a psychological concept, not tied to a physical boundary (Gifford, 1997:220). A resident's confidence and satisfaction with their neighbourhood may influence their response to development proposals. Proposed development projects can be perceived by some as a threat because they will change the physical nature of the neighbourhood. Those who feel their relationships to their community places are threatened by development may resist a proposal regardless of its potential value (Manzo & Perkins, 2006:337). This study focuses on and reflects the importance placed on people's homes and the character of their neighbourhoods.

Additional to place attachment is an individual's environmental attitude, defined as an individual's concern for the physical environment as something worthy of

protection, understanding or enhancement, and includes what an individual knows or thinks about a place, emotional aspects of attitudes, and behavioural intentions towards the place (Gifford, 1997:47). This study considered whether there was any link between general environmental concern and responses of affected parties to developments in their neighbourhoods. A range of different mechanisms have been developed to measure environmental attitude. Elements of one such, the New Environmental Paradigm, was adapted for the questionnaire used as part of this survey (see Chapter 4). Recent theory suggests that attitudes about environmental issues depend on the extent to which people view themselves as part of the natural environment. A distinction can be made between those who are ecocentric (value nature for its own sake) and the anthropocentric (value nature because of its value for people).[51] As expected from work relating to NIMBY, proximity to a perceived environmental threat leads to greater environmental concern (Gifford, 1997:51). Gifford (1997) states that knowledge and attitudes to the environment on its own is not enough to change behaviour, and notes that reported and actual behaviours may differ (Gifford, 1997:53-4). Thøgersen and Ölander state that environmental behaviour is guided by broader, cross-situational attitudes or values (Thøgersen & Ölander, 2006:551). An association between environmental concern and socio-demographic variables such as gender or race, personal values, and physical context has been documented (Sevillano et al, 2007:688).

Personality[52] also affects how people interact with the environment (Russell & Mehrabian, 1974). A person's locus of control has been related to responsible environmentalism – those with a more internal locus of control believe in personal responsibility and are more likely to be environmentally responsible (Gifford, 1997:83-5). As with environmental attitudes, there have been various approaches to measurement of personality and environment e.g. the Environmental Response Inventory (Mckechnie, 1975) which attempts to measure environmentally related personality types (Gifford, 1997:88). Such lines of investigation may be important but are beyond the scope of this study.

[51] Other writers propose classifications that further divide each aspect (Sevillano et al, 2007: 686).
[52] Personality is defined as "a person's unique pattern of traits" or "the dynamic organization within the individual of those psychophysical systems that determine characteristic behaviour and thought" and has traditionally been determined upon a person's degree of preference for external stimulation (Gifford, 1997:79).

Summary

Planning is a vehicle for managing the tension between private and public rights and interests and requires the application of value judgements to decision-making on resource use. Ethical decision-making in a representative democracy requires fairness, transparency and accountability. Compensating for power relations in society is an important concern. Planning requires both just processes, and justice in substantive outcomes. Despite the acknowledged flaws of the communicative approach, there is a general trend towards more inclusive approaches that seek to incorporate the diversity of world views and acknowledge process rights. Communicative approaches imply compromise and some question whether it is possible for the interests of all in a diverse world to be fairly considered against the prevailing economic and political powerbase.

Rights approaches have been criticised as vehicles for particular interests, with property and development rights being given greater recognition than the rights of third parties. Rights approaches cannot solve the planning dilemma, as rights can be conflicting, and do not necessarily deliver public interest outcomes. However, Ellis (2004) sees them as a tool for defining, prioritising and safeguarding fundamental values of liberal democracies. Alexander (2007) has supported this through the concept of planning rights.

The extent to which third parties should be involved directly in planning decisions is a perennial debate underlying the major conflict in planning, between providing greater efficiency and certainty to development interests, and the desire to empower individuals and communities to influence the shape of their community. Leading theorists and researchers champion third-party rights, as fundamental to the principles of participatory democracy, notwithstanding such rights challenge deeply held ideologies of private property rights. Whilst planning legislation and plans are considered to represent the public interest, third party involvement is seen as necessary to ensure they are appropriately implemented. The level of success of third party appeals suggests that local planning systems require the checks and balances provided by third party involvement, and giving exclusive rights to property interests is no longer seen as fair.

The s 94 process allows land development that contributes to the overall social and economic well-being, and allows landowners to maximise their property rights, whilst taking steps to consider externalities (avoiding, remedying or mitigating adverse effects) which may impact on the environment or others (affected parties).

Ellis (2004, 2007) found a complexity of motivations for opposition to developments. The disparagement of objectors as motivated by NIMBYism or self-interest, has been widely challenged, especially where the ethics of developments are questionable and individuals are asked to bear a disproportionate social cost. Objectors may be simply seeking to defend agreed community objectives and polices as set out in local plans, or expressing legitimate fears or concerns for the quality of their neighbourhoods. Ellis (2004) found that whilst objectors expressed some self-interest, the majority portrayed a range of motivations, contrary to the type of instrumental participation found by Campbell and Marshall (2000) (Ellis, 2004). Given the emphasis in society on individuality, Ellis (2004) questions why people should be expected to sacrifice their interests for the public good when developers may openly promote their own narrow interest. Whether in the public interest or not, self-interest can be seen as merely reflecting an individual's rights, and defence of one's interests is a legitimate part of a democracy. NIMBY can be seen as a conflict between the rights of the individual and the community, and property rights (Lake, 1993). In the weighing of total benefit against total cost, individual rights need to be acknowledged (Hermansson, 2006:1).

The work of environmental psychologists such as Gifford (1997) on relationships trust, and approaches to knowledge, highlights the relevance of psychology in the planning system. Achieving consensus on 'wicked problems' or 'buy-in' on divisive land use conflicts, is increasingly reliant on collaborative approaches and building of relationships. Perceptions of the environment, 'place attachment', and concepts of neighbourhood are psychological phenomena, all of which may influence how a person responds to development in their locality. An individual's environmental attitudes have complex origins, and may not always be reflected in their behaviour. Whatever the underlying conflict or motivation, "affected parties" are an important concern in planning.

CHAPTER 4 METHODOLOGY

Overview of Methodological Approach

To answer the research question and its associated objectives, data from persons whose approval is sought is required. Additional relevant data could also potentially be collected from site inspections, consent authorities and resource consent applications. However, the focus of the research is on the affected parties and their motivations and perspectives, therefore gathering data from those persons was a priority. The most commonly used approaches for gaining data from individuals are surveys or questionnaires, interviews, case studies and focus groups. A general public survey was considered of little value, as only those who had experience of being an affected party could provide the data sought. Other methods such as public meetings were not considered because of impracticality and inappropriateness for the research question, which essentially requires a candid, personal response. Surveys or questionnaires may be written, face-to-face, by telephone or online. Interviews are either by telephone or in person. Case studies in this context may involve a range of methods to investigate in depth one or more resource consent applications and are used to explore multiple elements (Ritchie, 2003). Focus groups allow discussion of issues in a social setting.

Case studies were not used for several reasons. Firstly, it was not practical to identify a limited number of individual consent applications which could illustrate the range of matters raised in the research question. Secondly, such an approach was likely to put undue focus on the application itself, rather than the experiences of the affected parties. There was an on-going risk that the study would become an assessment of the merits of the decision or councils' actions, which needed to be avoided, as it is not the purpose of the study. A case study approach would have involved looking in detail at a very small number of applications and would have reduced the data on the experiences of the affected parties. Finally, the uncertainty of recruiting sufficient participants from a limited number of applications was disadvantageous. Focus groups were not used because it is important in this study that individual responses are not 'coloured' by the views of other participants or concerns about how others might judge other individual's responses. A suggestion

from one participant that their neighbours, who had also been affected parties, be included in the interview was declined.

Questionnaires provide a structured approach that enables comparative analysis, such as between those who gave and withheld written approval, and enables evaluation of the relative frequency of certain types of responses and experiences. The limitations of quantitative methods such as questionnaires as outlined by Tolich and Davidson are acknowledged i.e. this method does not "capture the meaning of everyday experience" (Tolich & Davidson, 1999:6), nor the subtleties that can be expressed in a face to face situation (Couper, 2005:4). Whilst questionnaires can provide a significant level of data, interviews have the advantage of providing "an undiluted focus on the individual" (Ritchie, 2003) and counteract these limitations, giving participants greater opportunity to relate their experiences directly to another person able to show genuine interest in hearing their stories and learning about their experiences (Holbrook et al, 2003:83). The presence of an interviewer can constrain reporting of sensitive information (Couper, 2005:3), and induce socially acceptable responses. Columbotus found there was no difference in such responses between telephone and personal interviews (Columbotus, 1969:10). However, Holbrook et al found that telephone interviews elicited more socially acceptable responses, and generated greater suspicion about the interview (Holbrook et al, 2003). In a face to face situation, the interviewer can be more aware of the attentiveness and effort being put into the answers (Holbrook et al, 2003:82). Also, telephone interviews are considered less suitable for lengthy discussion of complex issues (Columbotus, 1969).

This is primarily a qualitative study. Ritchie (2003) identifies four factors: contextual, explanatory, evaluative and generative. In this study the contextual component concerns what the s 94 process involved for the affected parties, their views and feelings about it, how they responded to their individual situations, and how they may be characterized, for example whether there were differences between those who gave and withheld written approval. The explanatory component involves attempting to determine what influences people's views about development, and motivation for decisions to give or withhold written approval. The evaluative component assesses the s 94 process in terms of the needs of affected parties. Finally, the generative component relates to

understanding how the situations of affected parties interact with the legal framework and how improved outcomes under the RMA may be achieved.

Ritchie (2003) considers that a mixture of quantitative and qualitative methods is common in evaluative research. A wholly qualitative approach (Tolich & Davidson, 1999) was not taken as some quantitative data from the preliminary questionnaire is presented. As the number of questionnaires available for analysis was limited, emphasis is not placed on this aspect of the study, but rather on the personal interviews which followed.

This research project was evaluated by peer review and judged to be low risk. It is considered to meet the criteria for Low Risk Notification under the Massey University Ethics Code and was not reviewed by one of the University's Human Ethics Committees. An important aspect of the study was the confidentiality of the participants and for this reason detailed information about the resource consent applications is not given. Similarly, in reporting participant statements, use of participant identifiers is frequently withheld to protect the anonymity of the subjects, who may otherwise be able to be easily identified.

This is not a case study of particular resource consent application or council performance, but a 'snapshot' or overview of a range of activities and the resulting experiences of the affected parties concerned. Whilst the subjects raised numerous issues or views which may be contested by the applicants or the councils, providing what was said was generally consistent with what the researcher had seen in the council files, or had been corroborated by other interviewees, the statements were accepted as valid ones.

Study Design

The relative advantages and disadvantages of questionnaires, telephone interviews and face to face interviews mentioned above were considered in setting up the study. Other key criteria were the necessity to include affected parties who both gave and withheld consent, and the inclusion of consent applications for larger developments that may potentially have adverse effects greater than minor yard encroachments and the like, to allow assessment of environmental outcomes. A telephone survey by a former Massey

University student (van der Voort, 2001) which looked at how well informed affected parties were, was considered when designing this study and efforts made to avoid its limitations. This study traverses some of the same subject matter but explores a wider canvas and in greater depth.

A questionnaire of identified affected parties was chosen as an initial data-gathering tool to gain information about the participants and their involvement with the s 94 process, subsequently followed up with personal interviews to provide a fuller picture of affected parties' experiences. The questionnaire fulfilled three functions: providing data on the process, providing demographic and attitudinal information about the participants, and providing a basis for determining the shape and extent of further investigation of the issues, through personal interviews. The interviews provide a mechanism to examine participants' perspectives in detail, and to allow discussion of the more conceptual issues surrounding this study, concerning public interest, rights, and motivations. Council files relating to the resource consent applications, including the council decisions, were perused both prior to the questionnaire being administered, and after the interviews had been completed. Although there were no site inspections as such, during the course of the interviews, all of the application sites were seen.

Tauranga City and Western Bay of Plenty District Councils were chosen for the study, because they were readily accessible and allow a range of applications to be studied including both an urban and rural component. More than one district was sampled, to allow for any variation in process from one council to another. The sample chosen to complete the questionnaire was not chosen randomly, but purposively (J Ritchie, Lewis, & Elam, 2003), to reflect a range of responses to different types of resource consent applications and so that the sample included both those who gave and withheld written approval. Ten limited notification consents were identified where there were affected parties including some who had not given written approval. A range of types of applications were chosen to provide for the widest range of responses. The consents chosen included horticultural processing facilities, education and childcare facilities, rural and urban subdivision, business use in a residential zone, tourist accommodation and apartment development. The consents were classified as restricted discretionary,

discretionary or non-complying activities. Controlled activities were deliberately excluded to ensure that the study was focused on applications more likely to have effects beyond the site boundary, and not biased towards applications unlikely to have substantive effects, such as minor yard infringements. All of the consent applications selected were lodged in 2005 and 2006, to allow a higher probability of the development, if consent granted, being completed at the time of the survey. This allowed for consideration of respondents' views about the development once it had been completed.

In 2008, names and contact details of people who had been asked to give written approval under s 94, together with basic data about the applications, was collected from council files for the consents selected for the study. Statutory bodies, tangata whenua and community and environmental groups were not included in the sample, as the focus of this study is on the experiences of private citizens. Only persons for whom a current address and telephone number could be verified were included in the sample. Fourteen affected parties who had moved were identified and included in the study, three of whom responded to the questionnaire.

In October 2008, a survey questionnaire (see Appendix 6) was posted, together with an introductory letter, information sheet, consent form (see Appendix 5) and stamped return envelope, to 98 persons considered affected parties from the selected resource consents. Two weeks after the questionnaire had been posted out, those who had not responded were followed up with a telephone call to enquire whether they had received the questionnaire, and whether they wished to participate in the research. To avoid the bias created by non-responses from 'satisfied' affected parties, potential participants were advised that responses were sought reflecting the range of experiences, not just those dissatisfied in any way. Reasons volunteered for not returning the questionnaire included being too busy, consideration that they were not affected, or not receiving the questionnaire. Several subjects were sent another copy of the questionnaire.

The Questionnaire

Fifty-two questionnaires were sent to co-owners, i.e. to 26 addresses. It was not considered practical to randomly select a co-owner because it was not possible to

distinguish co-owners from council records, and it could not be assumed that both owners would either complete the questionnaire, or indeed respond in a like manner. Only two questionnaires were returned from the same address, and there were some differences in the answers given, especially about asking for more information and making the decision.

The questionnaire contained 45 questions, exploring each stage of the s 94 process, from the initial contact made by the applicant, to views concerning the completed development and the RMA. A combination of open and closed questions was used. Closed questions were asked to establish a factual base e.g. "Do you know the applicant personally?", and open-ended responses were sought giving reasons or explanations e.g. describing their relationship with the applicant. When constructing the questionnaire, efforts were made to avoid a bias towards the dissatisfied through the inclusion of both positive, negative, and neutral choices, and the opportunity to make further comment if desired. It was expected that respondents who gave written approval might not make any additional comments, whereas those unhappy with the process may make more additional comments. A bias was also possible in that affected parties who happily gave written approval may have been less motivated to return a questionnaire but this was not evident (See Chapter 5).

At the end of the questionnaire, respondents were asked four general questions concerning their general environmental attitudes (Questions 38-41). A suite of questions was included to test whether the decision to give or withhold written approval reflected any wider environmental concern. The framework of the New Environmental Paradigm (NEP) Scale (Dunlap & Van Liere, 1978) was chosen as the basic approach as it is long-standing and widely used. The NEP has been adapted by various researchers (Dunlap et al, 2000) but the underlying dimensions of dominance of humans over nature, balance of humans and nature, and limits of human growth, are a common core. As the NEP scale has been used to survey environmental attitudes in the neighbouring Waikato region to where the study sample is located (Bay of Plenty), it was decided to use some of the same questions as in the Waikato study. However, the Environment Waikato (EW) survey had a much greater survey size, and its sample was

balanced for gender, age, location and ethnicity of the region's population, which was not the case in this study. The original NEP survey had 12 statements. The EW surveys utilize six of the original twelve items.[53] In this study, only three were used (Questions 38-40), as the questionnaire was focused mainly on the s 94 process, and there was a concern that the questionnaire not be so long as to dissuade respondents from completing it. The NEP items chosen each represented one of the underlying dimensions mentioned above, and were also the questions from the scale which were the most aligned with the subject matter of the preceding questions. Two questions (Questions 38 and 39) were expressed negatively towards the environment, and the remaining question (Question 40) was positively expressed.

Table 1 Questions from the NEP Scale and Associated Dimensions (EW)

Question	Dimension	Question
38	Balance between humans and nature	Do you agree or disagree that modifying the environment for human use seldom causes serious problems?
39	Human dominance over nature	Do you agree or disagree that humans have the right to modify the natural environment to suit their needs?
40	Limits to growth	Do you agree or disagree that the earth is like a spaceship with very limited room and resources?

The responses were scored on a 5 point scale, adjusted according to whether the questions were expressed positively (Question 40) or negatively to the environment (Questions 38-9). The scores for answers to each of the three statements were added together to deliver a rating out of 15. These scores were classified into three levels of environmental support based on that used by EW, but halved because of the reduced number of questions.

[53] http://www.ew.govt.nz/Environmental-information/Environmental-indicators/Community-and-economy/Communities-and-their-views/p2c-techinfo/

Table 2 Definition of Levels of Environmental Support

Environmental Attitude	Score Range
Pro ecological	12-15
Mid ecological	9-11
Anti ecological	3-8

A further general environmental question (Question 41) included was 'Circle the number that best shows how concerned you are about the environment, where 1 means you are not concerned and 7 means the environment is of utmost concern to you.' This question was included as a guide to the consistency of responses to the previous questions 38-40. Scores were categorised in the following manner:

Table 3 Scoring of Question 41

Environmental Attitude	Question 41 score range	NEP score range
Pro ecological	6-7	12-15
Mid ecological	3-5	9-11
Anti ecological	1-2	3-8

Finally, basic demographic information on sex, age and income was sought. Respondents were also given the opportunity of adding any further comments they wished to make which had not been covered by earlier questions.

The relationship of the other questions to the research objectives is set out below:

Table 4 Relationship of Survey Questions to Research Objectives

	Research Objective	Related Questions
A	To explore experiences of the s 94 written approval process	1, 7, 9-18, 26-36,
B	To explore affected parties' awareness of the planning system	1, 37
C	To examine affected parties contact with the developer (relationship) and council (if any)	2-6, 8, 9-18, 30
D	To determine what factors influenced a decision to give or withhold written approval including seeking advice from others	7, 13-25
E	To determine the needs of affected parties	8, 9-18, 29, 31
F	To explore improvements to the process	26-34
G	To examine affected parties' responses to the completed development	35-6
H	To reflect on whether responses within the process mirror wider environmental issues including public participation and concerns for the environment	38-41

The Interviews

An effort was made to interview as many respondents to the questionnaire as possible. Twenty two interviews were conducted between March and May, 2009. These included 19 of the 27 who returned questionnaires. Questionnaire respondents were telephoned and asked if they would agree to an interview. They were thanked for returning the questionnaire and invited to participate in a further stage of the research. They were told the interview would take about an hour and would cover some of the aspects raised in the questionnaire in more depth, as well as more general aspects about the planning system. Although no set script was used, a similar format was followed in all cases. In a small number of cases, clarification was needed as to which council process was involved, as some respondents had been involved in multiple consultations. Questions about

practicalities were briefly answered, and if the participant agreed to an interview, they were sent a further letter, information sheet and consent form about the interview project and an interview time and place was arranged. Participants were asked at the time the interview was arranged, and again before the interview commenced, if they agreed to have the interview recorded. All participants willingly agreed to the interview being recorded. For logistical reasons, the interviews were arranged and carried out progressively over several weeks. Only one person who was invited to be interviewed declined.

Seven respondents were not approached. The majority of these were discounted for practical reasons such as ill-health, relocation to another town, or to achieve a spread of subjects across the consent applications in the study. Two of the applications in the study generated a larger number of responses to the questionnaire whilst others elicited only one or two. For the two applications with a larger number of respondents, once four or five interviews had been arranged (randomly selected depending on contactability), no more were sought. In two cases the questionnaire responses indicated subjects were unlikely to add to significantly to data already collected from other participants. Three people who had not returned the questionnaire were also interviewed. These people had been spoken to during the follow-up reminder for return of questionnaires and had indicated an interest in participating but had not subsequently returned a questionnaire. Two of these were the only subjects available for their two respective applications, and the other was the only person to attend a hearing for one particular application. These three people were included in an effort to gain a wider range of data as all had attended a hearing, and because it was accepted that the lengthy questionnaire may have been a barrier to initial participation.

The majority of interviews took place in the interviewee's own homes, with four at the subject's workplace, and one by telephone. The latter was about 45 minute's duration. Although not specifically recorded and analysed for length, the majority took about an hour and fifteen minutes. The shortest was approximately half an hour, and the longest 2 hours and 20 minutes. The shortest interviews tended to be those conducted in the workplace where time pressure on the interviewees was evident. However, the length of interview was also dictated by the talkativeness of

the subject, and the complexity of the situation they were involved in. The recordings of the interviews were selectively transcribed for analysis to the extent that irrelevancies, interruptions, interviewer's questions or comments and the like were not included. The transcriptions will not be released. Technical recording problems were experienced during three interviews, and the telephone interview was not recorded.

The interviews followed a broad general outline (See Appendix 8), but not always in the same order, dictated by the interviewee's responses. Effort was made to avoid interrupting the flow of the affected parties' responses. Notes were also taken of key points as a backup to the recordings. Transcriptions were done as soon as possible following the interview, on the same day where possible.

When discussing the NIMBY issue, and exploring what people would object to, bearing in mind about half of the interviewees had given written approval and were not objecting, common examples of large developments considered in the public interest but attracting opposition were used e.g. a prison, a wind farm. Depending on where the interviewee lived, other examples were used such as a multi-storey building, rubbish dump, or new residential subdivision, being "not fanciful" scenarios that could occur within the view shaft of the person's home.

Limitations of this Study

Excluding most affected parties who no longer lived at the same address as at the time of the application potentially creates a bias. It could be argued that those who are still residing at the same address are more likely to have been affected by any development than those who have moved. Alternatively, they may have readily given written approval because they did not consider themselves affected, and may have actively supported the development. On the other hand, those who have moved may have done so because of dissatisfaction created by the development.

Only some affected parties from each application responded to the survey which may have created a bias and only the views of those who agreed to participate are known.

However, as respondents overall included those who both gave and withheld consent, this is not considered significant.

By confining the study to applications that were not publicly notified, the full range of reasons why people support or oppose a development may not have been canvassed. However, the focus of the study was on the experience of persons affected under s 94, and notified consents involve a range of people and organizations outside of the scope of the s 94 and the research question.

The validity of the data collected for this study is based on the assumption that, given a neutral and open approach from the researcher, the responses given are truthful. The passage of time between the events involved and the responses given may also have blurred memory in some cases. Holstein and Gubrium suggest that interview responses should not be considered as reality reports but as "ways they construct aspects of reality in collaboration with the interviewer…what is being said relates to the experiences and lives being studied" (Holstein & Gubrium, 1997). This study reflects this. The pressure of time limited the scope for data collection to a single interview session and restricted exploration of plan provisions for the zone, the practicalities of participant suggestions, and overall environmental attitudes.

Summary

The research question dictates that the primary source of data is the people whose written approval is sought. The participants were selected to include both those who gave and withheld written approval. Additional background and corroborative information was gained from resource consent files. Common methods of gaining data from individuals have both advantages and disadvantages in practicality, comprehensiveness and reliability. A combination of a questionnaire and personal interviews was chosen for this study, with emphasis placed on the qualitative approach. Questionnaires were sent to 98 affected parties in the Bay of Plenty. A modified form of the NEP scale was used to assess overall environmental attitudes. Twenty two affected parties were interviewed in a single session of an hour or so.

The data gained is limited by the willingness of potential subjects to participate in the research and the potential for interview dynamics to affect responses. Efforts were made to counter this by including participants who both gave and withheld written approval (including some who were undecided), by assessing information against that held in council files, and corroboration by other interviewees.

CHAPTER 5 QUESTIONNAIRE RESULTS

Introduction

The questionnaire response rate was 27%. Respondents included 16 males (59.25%) and 11 females (40.75%). Forty one per cent of respondents were over 60 years of age. A table summarising the questionnaire responses can be found in Appendix 7. All but one of the applications were represented in the responses received. As most of the respondents were subsequently interviewed, and all of the key issues raised are discussed in the Interview Results, not all of the issues arising from the questionnaire are reported here. Emphasis in the questionnaire analysis was placed on distinguishing responses according to whether written approval was given or withheld, or in some cases undecided. For readability, some of the questionnaire results are reported out of numerical order, and may be grouped with other related questions. Similarly, some of the written comments to the questions have been included where they are of the most relevance, rather than their sequential order. Square brackets are used to clarify or to bridge where words have been edited and some punctuation has been inserted for readability. Sometimes quotes are not attributed to protect anonymity.

Questionnaire Responses

Attitudes Towards the Proposal

Written approval

Eight of the 27 respondents (29.62%) gave written approval (see Table 5). Another five initially gave written approval but later withdrew it, mainly because further information revealed greater effects than originally understood, and in one case agreement over access could not be carried out for legal reasons. Thirteen withheld written approval, even though two were positive towards the project, and one was neutral. Another respondent who indicated a positive initial response towards the application did not sign because he never received requested information. Those who gave written approval were equally divided between male and female. However, twice as many males (seven) withheld written approval, compared with three females who withheld written approval.

Table 5 Comparison of Approvals Given, With Surveyed Response, and View of Completed Development

Response under s 94 for written approval		Initial response to development (Question 7)		View of Completed development (Question 36)	
Gave Approval	8	Positive	12	Positive	2
				'OK' Satisfactory	5
Withheld Approval	10	Negative	9	Negative	4
Gave approval but withdrew	5	Neutral	2	Incomplete	5
				Moved	2
Did not sign*	3	Undecided	4	No comment	3
Undecided	1			Declined#	6

*Written approvals were not found on the council files but two indicated they were in favour and one was neutral.

One application was declined and another which generated five of these responses was actually granted but in a much reduced form; and for the purpose of reporting and discussion is classed as declined. The applicant subsequently sold the property and consent was not exercised.

Initial Reaction to the Proposal (Question 7)

Respondents were asked about their initial reaction to the proposal when it was first presented to them. Twelve respondents (44.44%) gave a positive initial response to the proposal. Nine (33.33%) were negative, two (7.4%) were neutral and four (14.81%) undecided. These data indicate that a range of viewpoints were captured through the survey, and that the sample was not overly biased to a negative viewpoint, a potential risk with surveys.

Analysis of respondents' initial reaction to the proposal compared to their official response as indicated by a written approval, showed consistency, giving weight to the validity of the responses. It was expected that respondents who gave written approval might not make any additional comments, whereas those unhappy with the process may make more additional comments. This was true to the extent that those who did not give approval gave more extensive comments. However, only one person who gave approval returned what could be described as a 'minimalist' response.

Views on the Completed Development (Question 36)

It became clear during the interviews, that many, if not all, of the respondents, interpreted 'completed development' as 'implementation of all conditions', so when reference was made in this question to partial completion (incomplete), this was interpreted as meaning only some of the conditions had been carried out, which possibly accounts for some discrepancy in responses to Questions 35 and 36.

Response to the developments was mixed. Of the 19 respondents who reported the development was wholly or partially completed, only two expressed a positive opinion about the completed development (a childcare centre). Five stated the development was "OK' or satisfactory "true to plan, not very aesthetic, but OK" [117],[54] or there was no difference, and four were negative.

The research sought to discover if initial negative feelings about proposals ameliorated or disappeared once the development was complete. All but one who had given written approval thought it was either positive or satisfactory. None of those who expressed an initial disapproval changed their response.

[54] Numbers in square brackets are participant identifiers.

The Pre-Approval Stage

Contact between Applicants and Affected Parties (Questions 3-6, 8)

More than half of the respondents were approached directly by the applicant, through a personal visit, with most others receiving information by mail. Half of the applicants used consultants.

Seven respondents knew the applicant personally, six being neighbours. Only three respondents reported a negative relationship with the applicant. Others reported the relationship as either businesslike or neighbourly. Approaches were made either at the design stage or when plans were complete — there was no particular pattern.

Level of information (Questions 9-12)

Just over half of the respondents (52%) felt they were given enough information about the application to know how it was going to affect them, but 40% felt they did not: "We had to work hard to find out all the information" [168]. Half of the respondents requested further information, including almost all of those who did not give approval as well as some who did give approval. Information sought included the intensity of the proposed use, landscaping, effect on driveways, and noise control. Of those who sought further information, nearly half did not receive what was requested: "you are not given all the details – some come out at the hearing - others when project is commenced or completed" [168]. Five found it difficult to ask for more information and expressed confusion and uncertainty, including not knowing how to find out if the information in the application was "real and reliable" [34]; "I didn't know who to believe. The applicant just wanted a signature and council were hopeless" [199]. One respondent noted the need to go beyond information provided and have professional expertise.

Changes requested to the application (Questions 13-15)

Eleven respondents requested changes to the application including fewer vehicle movements, reduced hours of operation, rubbish control, noise management, conditions on vegetation and landscaping, storm water, access: "we approved of the development but knew immediately the driveway was an issue" [72]. Some requested the application be declined. Of the changes sought, half were not

reflected in conditions and some only partially. One respondent said that changes made were "very minor although final consent did incorporate a number of conditions" [168]. Another appealed to the Environment Court to secure changes (the case is still pending). Others reported changes agreed that were "not fully complete even today" [121] or "they never occurred" [199], including changes incorporated into the decision.

Side Agreements (Questions 16-18)

Eight respondents indicated a private agreement had been made with the applicant, four written and four verbal. Agreements included money in return for a boundary encroachment, agreement for the applicant to buy the property, and arrangements for rights of way. Two of the verbal agreements have not been implemented.

Advice Sought by Affected Parties (Questions 19-21)

Seventy percent of the respondents talked to somebody before deciding whether to give written approval. Sixty percent talked to other neighbours; and a third talked to family and the council. Only five (18.5%) talked to a paid professional, although another two (7.5%) talked to a professional friend or acquaintance. The advice received was "multiple and varied. From 'strong reaction needed' to 'leave it – you won't achieve [anything]' " [168]. Seven were advised to object, three to take their concerns through the process. Most of those who sought advice (63%) said they followed the advice given.

Deciding Whether to Give Written Approval

Questions 23-25

About two-thirds were in favour of the application or neutral. Some took a common sense approach: "I approached the application with an open mind knowing that a development of some sort was inevitable" [239]; "her plans ... seemed like a good idea" [76]. Others were more directly supportive: "good for growth of the district; we bought our property knowing it backed onto a cool store prepared for further development" [122].

Only one respondent found it difficult to decide whether to give written approval: "I didn't know who to believe or trust. It was draining stuff and no-one appeared

to be honest/open/forthcoming" [199]. All of the other respondents had no difficulty making up their minds, most basing their decision on the effects of the proposal or whether they considered it an appropriate land use. Those in favour made comments such as: "what they were proposing would not affect our property or quiet enjoyment" [212]. Those against were very clear: "large impact on life" [176]. A few respondents saw the applications in terms of planning issues: "the proposal... was contrary to good planning" [239].

Most (70%) felt under no pressure to sign: "[we] knew what we wanted" [72]. However, about a quarter (seven) did feel pressure to sign, some to a considerable degree. Six were opposed to the proposal. Respondents expressed a dislike of feeling pressured and manipulated: "the applicant came to the door... demanding to know why we didn't agree with her proposal" [175]; "constant harassment" [176]. One respondent pressured to sign gave approval but subsequently withdrew it: "not heavy pressure but felt a definite mood for jobs within district" [34]. One respondent felt pressured by both the applicant's agent and one member of council staff: "I was placed under great pressure to sign and avoid a hearing" [133].

Respondents' concerns centred on property amenity (noise, access, traffic), and environmental effects. Whether positive, negative, or neutral, effects on property and lifestyle were commonly mentioned. Others wanted their particular issues, such as boundary matters, to be addressed.

A personal factor influencing respondents' decisions related to a lack of trust arising from the applicant not disclosing relevant information or starting work without authorisation. Others were influenced by what they thought was an appropriate or inappropriate use of land: "we saw no reason for not giving approval. It's an existing business with necessary extra requirements" [119]; "inappropriate use of rural residential land [168].

Notification and Hearings

Questions 26-27, 32

As Question 26 did not distinguish between limited and full notification, there appears to have been a discrepancy in the way respondents answered it, although it is likely that most of the respondents are not aware of the technical difference. Ten respondents (37%) did not know if there had been any notification process, despite the legal requirement at the time (s 94 (1)), that all affected parties, including those who have given written approval, be served. Six of the eight respondents who indicated the application had been notified, made submissions and attended a hearing. One person made a submission in favour.

Two thirds of the respondents thought that the application should have been publicly notified - this included eight who had given written approval and four were neutral or undecided. These respondents thought the activity could affect a lot of people and the wider community should have a say. Comments reflected public interest and planning issues that are discussed further in Chapters 6 and 7.

What were the Experiences of the Affected Parties?

Question 28

The responses to this question were wide-ranging from "no problem" [117, 222] to "sculdugerous!"[33]. Positive comments were framed as professional, businesslike, and friendly, and included good information. The negative comments (10) tended to be strongly critical and sometimes almost vitriolic, arising from poor information, pressure to agree, and a lack of trust: "quite distressing applicant seemed to think we should not object" [174]; "deceitful as they tried to conceal information" [180A]; "at first they were wonderful. This changed dramatically when I wouldn't sign the consent. They became manipulative/dishonest /intimidating" [199]. Negative remarks arose mainly from four applications in which it was apparent that the applicants were rude or not open with the parties.

Opportunity for concerns of affected parties to be expressed (Question 29)

Nearly 80% of the respondents considered they had had sufficient opportunity to express their concerns. Those who did not included affected parties who had complained to the council about existing activities: "they weren't listening" [176]; "I was made to feel like a troublemaker... I just wanted clarification on issues" [199]. Those who pursued their objections through the system felt they lacked expertise and "found it very hard to express concerns in a constructive manner in the realms of hearings and Court".

Satisfaction with the Council process (Questions 30-31)

Sixteen (60%) were officially advised by the council of the outcome of the process. Those not advised seem to be persons who gave written approval. Fourteen (52%) were satisfied or partly satisfied with the council process, the remainder being evenly split between those who were not satisfied and those who Didn't Know. Generally those who were not bothered by the activity found the process satisfactory: "satisfied with process – no need to question anything" [72]; "we didn't have direct contact with council...other than prior notification and subsequent result" [119].

Comments from respondents who opposed the activity included: "was reasonably happy with process but felt council was slow on uptake of our concerns, that we had to really get angry before they took notice" [34]; "they [the council] stated that 'everyone' in their lunchroom thought the project was a good one" [199].

Improving the Process for Affected Parties

Question 34

Respondents were evenly divided between those who thought the process could be improved and those who thought it could not. Some of the adversely affected parties felt lost in the process and suggested the council take a more active role: "more initial help, information by council" [34]; "that an advocate be appointed to assist affected parties. (A neutral advocate with no conflict of interest)" [199]; "council should work more closely with applicants and neighbours to resolve issues and make sure of full involvement 'as neighbours' " [168]. Compliance was an

issue where an application arose out of a history of non-compliance: "council should have used its power to stop the [activity] early on as affected parties were alienated by the time the process began for consent to be considered" [175]; "the decision may be made with no consideration of enforcement procedure later on" [34]. Better communication was a third theme. Some affected parties felt isolated: "we felt strongly enough to make a submission against but were resigned that we would probably be the only ones" [207]; another suggested "call a meeting amongst all those that it concerns" [121].

Views on the RMA

Questions 1 and 37

Seven respondents (26%) had experience with the RMA before this consent, half as affected parties for other resource consents, two of which were previous developments on the subject site, with two respondents having experience as an applicant, and two as a submitter (some had experienced more than one role).

Half of the respondents said that their s 94 experience had not affected their views about the RMA, and half said it had. Comments made were generally negative and focussed on the time-consuming nature and complexity of the process: "it's a cumbersome, difficult act to work with....when common sense could easily solve the issue" [33]. Implementation of the Act was the biggest concern: "needs to be followed to the letter" [175]; "stricter enforcement rather than looser interpretation... Implementing the district plan regardless" [133]. Accountability of council staff was also mentioned. The weaknesses of the Act from the affected parties' point of view were summed up by this respondent: "a costly, aggressive, litigious process. Applicants have upper hand... as can re-apply if initially refused" [168]. This was supported the view that "management seems a strong word for what appears to be subdividers manoeuvring council into only one possible outcome" [194]. However there was a difference of opinion on who was advantaged. Others thought "the applicant would seem to have a mountain to climb" [123]. There was a very strong view that "...affected parties should not have to spend a lot of money in a court of appeal. Needs a law change" [175].

Environmental Values

Questions 38-41

The study sought to determine whether decisions to give or withhold approval reflected any broader environmental attitudes. Questions 38-40 follow the New Environmental Paradigm (NEP) (see Chapter 4) and were based on Environment Waikato's (EW) environmental values survey. The results for this study were:

Table 6 NEP Scores

Environmental Attitude	Study Scores	Score range
Pro-ecological	5 (20%)	12-15
Mid-ecological	15 (60%)	9-11
Anti-ecological	5 (20%)	3-8

N=25[55]

Comparison with EW surveys

The average NEP score for this study was 9.84. Extrapolated to the EW scoring system, this converts to 19.68, slightly lower than the average EW score of 22 in 2008,[56] 21 in 2004, and 23 in 2000. In Waikato in 2008, there was a smaller number in both the pro- and anti- categories. The key similarity was that the majority fell in the mid-ecological range, with similar numbers at each of the extremes. The slightly lower mean score in this study is unlikely to be significant, considering the small sample size and similarity in distribution between the three categories. These data suggest the attitudes of the respondents in this study are similar to those in the broader mid-North Island population.

Comparison by Gender

The gender range for the NEP scores shows a wider range for males, with all females grouped in the 8-12 range, whereas males had both lower and higher scores (6-14).

[55] Two questionnaires were unable to be coded

[56] The EW 2008 result was 15.6% with pro-ecological attitudes, 69.9 with mid-ecological attitudes and 14.5% had anti-ecological attitudes. http://www.ew.govt.nz/Environmental-information/Environmental-indicators/Community-and-economy/Communities-and-their-views/p2c-techinfo/

Comparison with self-assessment (Question 41)

Question 41 asked respondents to rate their concern for the environment on a 1-7 scale with 1 indicating no concern about the environment and 7 indicating the environment being of utmost concern. This question was used to assess consistency with the NEP scores.

Table 7 **Self-Assessment of Environmental Concern**

Question 41 score range	Frequency	Environmental Attitude	NEP score range
6-7	14 (56%)	Pro ecological	12-15
3-5	10 (40%)	Mid ecological	9-11
1-2	1 (4%)	Anti ecological	3-8

N=25

These data would indicate the tendency for individuals to over-rate their level of environmental concern when compared with their NEP score. Although these results should be considered with caution, the overall pattern of the majority of respondents falling into the mid-pro ecological categories is clear. There was no clear relationship between a respondent's NEP score and whether or not they had given written approval or what there initial response to the development was.

Analysis by Age Group (Question 43)

No strong relationship between age and NEP score could be determined.

Income (Question 44)

Nearly one third (seven) of the respondents declined to indicate an income level. As with other responses, the NEP scores reflect a range of income brackets and no clear conclusions can be drawn as to the effect of income on the environmental attitudes of the respondents in this study.

Almost a third of the respondents (eight) sought to qualify their answers to Questions 38-40 depending on the individual circumstances. Respondents sought an option that said "Sometimes Agreed/Disagreed". Another gave written

responses only. This would suggest that for many, assessing matters on a case by case basis is important, and they are not responding according to a fixed value set. Not surprisingly, this group included three of the four 'Undecided' respondents, but both 'Positive' and 'Negative' respondents made up this group.

Summary

The respondents to the questionnaire reflected a range of attitudes towards the development for which they were affected parties, from willing approval, initial approval followed by withdrawal of that approval, undecided, to opposition to the project. There was a high level of consistency between questionnaire responses and actual behaviour, including views about the development once completed, with none of those who expressed an initial disapproval changing their views.

Respondents reflected a range of age and income. Forty percent of the responses were from persons aged over 60 years. The majority of responses were from males (60%). Overall, there was no indication from this study that the respondents' actions and views as affected parties was particularly influenced by age or income, or their broader environmental attitudes as reflected in their NEP score.

Affected parties largely based their decision to give or withhold written approval on the effects of the proposal, particularly on their property and amenity. Those who were not affected or not bothered by the application found the process satisfactory. For those who withheld written approval, the experience was largely a negative one. Although not all these respondents found fault with the process, there was criticism of how the council acted or failed to act. A quarter of the respondents reported feeling some pressure to give approval.

Just under half of the respondents felt there was not sufficient information provided, and half of those who asked for further information did not receive it. A clear theme of the negative experiences of affected parties was the lack of full information being provided at the outset which created suspicion that in some cases proved justified.

Significant process issues which emerged related to changes to the application after written approval was given, and the lack of implementation of changes requested by affected parties. In several cases where the application was notified, not all affected parties were served notice.

Many respondents considered communities should have more say about what happens in their neighbourhood than what is currently considered to affect only immediate neighbours, and it is not only those opposed to a development who support public notification. Affected parties wanted more communication and support from the council.

CHAPTER 6 INTERVIEW RESULTS

Introduction

This chapter reports data gathered in the interviews. Not all of the issues in the Interview Outline (see Appendix 8) are reported. The results are presented under themes from the literature review and the participants experiences: understanding of New Zealand's planning system, rights, significance of place, the s 94 experience and it's 'justness', NIMBYism, motivation for decisions, and outcomes for the affected parties. Discussion of results is found in Chapter 7.

The Interviewees

The interviewees included eight people who had given written approval, four who had given written approval but later withdrawn that approval, and nine who had withheld written approval. Duration of residence was evenly spread:

Table 8 Interviewee Time of Residence at Location (in years)

No of years at location	> 20	10-20	5-9	< 5
No of interviewees	5	7	4	5

All interviewees positively identified with their "place", with the exception of a tenant. Representation from the range of applications (see Table 9) was less even, because some of the affected parties declined to take part in the research. Interviewees had no knowledge of the other participants in the study, but a similar version of events was narrated about each application, including those who gave consent and those who didn't.

Table 9 Representation of Interviewees from Specific Applications:

Application	Type	No of interviewees
1	Horticultural processing facility	2
2	Childcare centre	2
3	Outdoor activity centre	1
4	Horticultural processing facility	5
5	Rural subdivision	1
6	School	1
7	Function centre	3
8	Urban subdivision	1
9	Visitor accommodation	4
10	Apartment block	1

Understanding of the RMA Planning System

Research objectives included exploring the affected parties' knowledge and awareness of the planning system. About half of the interviewees had some knowledge of local plan rules e.g zoning and minimum lot sizes. Most of those with awareness opposed the applications. Three people were familiar with planning because of their occupation. Maintaining the integrity of zoning and limiting rural subdivision was emphasized: "zoning has to be there… if it's zoned so it can't be subdivided [it] should be kept to" [113]. Performance standards in plans were expected to be strictly upheld. A key finding was that most interviewees did not understand the provision for discretionary activity consents, and were opposed to this practice: "they should change those rules allowing dispensations" [33];[57] "there's some basic rules, let's just stick to those" [190].

There was also some awareness of wider planning issues. Zoning activities appropriately and providing for growth was a common theme: "there is a huge

[57] The interviewees' use of the words 'variations' and 'dispensations' meant the use of discretionary consents. This issue is discussed further later in this chapter.

amount of activity in a pack house, a lot of movements. You don't buy a pack house and it stays the same"; "it doesn't allow for ...growth ...an alternative site was raised which would have involved considerably more expense in terms of an access road so of course it wasn't considered". Cumulative effects, especially from repeated subdivision of the same land, were also mentioned, although not described as such.

The s 94 experience has raised awareness of the plan, and motivated some to participate: "I would object where in the past I wouldn't... we are naturally pretty apathetic and it's not until it ... physically affects yourself that you get involved" [33]. A quarter of the interviewees knew the plan was being reviewed. The more knowledgeable interviewees had an interest in wider infrastructure and were not solely concerned with effects on them personally.

Many interviewees were vague or ill-informed about the plan: "a plan is to improve an area ...getting revenue off ratepayers" [76]. Assumptions were made that certain activities would not occur without asking neighbours. One person saw potential opportunities from plan changes: "it could benefit us because ... we could apply to make this more commercial and your property becomes more valuable" [121].

The Public Interest

One of the study themes is the role of the public interest in the planning system and its implications for affected parties. The public interest was seen cynically by several people as a vehicle to support decisions that had already been made: "it's what the council wants" [123]. The public interest was frequently advanced as justification for approval of the applications, such as providing jobs or other facilities for the district. There was a degree of suspicion about this line of argument: "the pack house ... hides behind giving local people work but there are plenty of people come from town ... so it doesn't really matter where it is"; "there was a commitment to put this thing through connected with the council's commitment to get community activities going". Some applicants were church organisations, which some interviewees felt helped secure the consent. Interviewees saw individual rights threatened by applications being couched in the public interest, and that rights of existing residents are not seen as a public interest

issue when new players come in. Some of the affected parties had given written approval because they saw the development as being in the public interest.

Interviewees understood the public interest to be what affects everybody, and in everybody's interest, as well as a majority issue: "the best for most of the people" [33], but one person disagreed it should be at the expense of individuals. The dilemma of identifying the public interest was recognised e.g. "if you're planning a park...which public is it? — the ones immediately adjacent to the park... the ones they're going to have the children who're going to play there... How do you define that?" [212]. One person specifically mentioned the public interest underlying planning decisions: "the public good is the primary purpose..." [190], and another saw the decision to notify as an indicator of public interest.

Interviewees agreed that the protection of neighbourhood character through the plan was a legitimate council role. New development should "take into account the character and the environment" [239] and not be at the expense of existing residents. As the recipient of rates, councils had an obligation to maintain the value invested in an area. Council planning intervention was justified based on the level of effects and the nature of the land use in relation to the character of the area: "It goes back to what effect it has on other neighbours" [76]; "when there is a radical change of operation" [34]; "activities if outside the norm for the type of area" [86]. Most of the interviewees believed planning decisions should be made by an independent third party with professional knowledge and expertise. A lack of trust in politicians, and perceptions of conflict of interest were strongly expressed although some did support elected councillors because of local knowledge and accountability.

Rights

The rights of affected parties are fundamental to this research. Knowledge of rights at the beginning of the process, subsequently, and the wider view of rights were explored. Copies of council forms provided to applicants seeking s 94 approvals from the two councils involved in the study can be found in see Appendix 4.

Awareness of rights at the time of the application

About a third of the interviewees had some understanding of their rights, but apart from those with work-related RMA experience, knowledge was tentative: "the right to voice my concerns, to get breakdown of data received…I knew it was a limited sort of thing" [207]. Knowledge was often gained by chance from friends or neighbours, and incomplete: "what we didn't know was what was allowed and what was not[58] ...We only knew what was on the papers[59] when we bought" [174]. One admitted "I was naïve enough to think I did. I was actually asked as an affected neighbour - that sounded good" [113]. The remainder either had no idea, or had erroneous notions. One assumed the council would act "on their behalf, take their interests into consideration" [34]. Another thought "it was nice of the applicant to ask us" [79]. A person who didn't know he had a right to ask for changes said "ignorance of the rules has had a negative impact on my outcome" [86]. When asked about rights, several responded by discussing their experiences and grievances instead.

Awareness of rights at the time of the interview

Many of the interviewees were still confused about their rights: "I'm not sure what rights we have – we can complain" [119]. One person believed an applicant only needed two signatures to get approval: "I feel we were quite naïve" [121]. Others still didn't know they could appeal. Those aware of their rights, felt those rights were constrained by decisions determining who is an affected party, or whether to notify. Individual rights were seen as of limited value: "numbers matter…When we got the numbers at the meeting that's when things started to change". One person struggled with the whole concept of regulatory process, electing to have "a conflab" with someone they knew on the council if concerns were ignored.

What rights interviewees thought affected parties should have

One person thought affected parties had sufficient rights "but I don't think the authorities … actually recognise people have rights" [133]. Others thought rights on their own were insufficient, due to the lack of understanding of the RMA. Information about what was allowed, explanation of the process, and assistance with writing submissions was needed, especially for those who struggle with paper

[58] These people subsequently approached the council and received the information they sought.
[59] Land Information Memorandum (LIM) Report.

work. A recurring theme was the cost of exercising their rights. One person suggested "neighbours should have a mechanism for working out reduction in value of property... If that wasn't there, our property would be more valuable" [34].

Basic rights were described as "the right to know, the right to discussion with the applicant and council...the right to appeal" [122]. The right to know was the "right to be fully informed about the impact on them... and advised what their rights are" [179]. It also included a wider scope for notification e.g. the suburb or subdivision: "any resident is entitled to have a say in what is happening in their area, especially if it's going to disturb the way people live" [174]. Interviewees emphasised "the right of quiet ownership – [you] shouldn't have to go to battle... council should do it for them" [168]. Participants strongly expressed concern for their rights, with the exception of one person who had blind faith in the council. Several interviewees thought there should be rights of review of resource consents: "[you] should be able to say five years down the track – do you realise this is happening?" [207].

Rights of Affected Parties where there are Existing Uses

Several applications were for extensions to existing uses which exceeded the criteria under s10 of the Act. Participants were generally familiar with LIM reports but at the time they bought their properties there was no indication of the subsequent proposals: "we were here first — he bought after us" [33]. Some took a pragmatic, although qualified, view to extensions: "the pack house was already there, we can't stop progress so as long as it's not having a big impact on a lot of people then let them go for it" [122]. Others were philosophical: "you would hope the council would be sympathetic to the people next door and take their concerns into consideration" [174].

Expansions created uncertainty as to whether there would be further applications: "there's... no mechanism that could protect us any better than in the past[60]... the uncertainty is troubling". However, interviewees thought residents' rights were much stronger in the case of new development. Affected parties felt there was an

[60] In 2007 the applicant applied (and was granted) extended operating hours.

unfair advantage to the applicant when activities had begun without consent: "it had already gone on for a couple of years and the longer it drags out the more entrenched by then… and it's pretty hard to say sorry you can't do that now and it's all set up".

Rights and Obligations

Rights approaches also involve obligations (see Chapter 2). Interviewees agreed that citizens had obligations for neighbourhood quality, but resented developers who didn't demonstrate neighbourliness: "the applicant doesn't show a responsibility to the community" [34]. Interviewees thought applicants could do more to ensure developments met the needs of the community, and thought developers had a moral obligation beyond legal requirements: "people should have responsibility…in their neighbourhood because otherwise you don't have a spirit of community…[that] is important regardless of what the council do" [133]. Councils had a key role for neighbourhood responsibility: "the council are the ones that usually make changes or give approvals so they need to be lot more responsible for things" [179].

The Significance of Place

The values of the place to people

The longest residing interviewees (> 30 years) had family ties to the properties. For others the location was important because they really liked the area and its attributes: "there was a community based feeling to the area" [86]. The most important aspect of place was the lifestyle and amenity values, including a feeling of safety and peacefulness, mentioned by 18 of the 21 interviewees: "It's beautiful, it's lovely" [212]; "one of New Zealand's finest subdivisions" [199]. Emphasis was placed on privacy and not being too close to neighbours; views and rural character: "I liked the fact that it was not as developed, not as many houses" [207]. Almost a third mentioned financial aspects such as business opportunities: "it was an opportunity to live in the country and make a living from it" [33]; or property values: "it's got good quality homes above average in value" [212].

How the resource consent has changed the place

One consent was declined and another is subject to appeal so no change has occurred. The neighbour of the appealed consent currently has a pleasant outlook: "if [it] went ahead there would be a three storey structure ...with glass windows and everyone looking down on me" [239]. A neighbour of the application that was declined said they would have moved if it had proceeded. The childcare centre has been a positive change, adding facilities used and welcomed by residents. Some traffic congestion occurs occasionally, but this is not seen as affecting quality of life because the area was already busy.

However, residents adjacent to a new school have a continuing concern with traffic safety. Changes to stormwater flows have resulted in additional maintenance problems of driveways and yards. Views have been changed by large, unattractive buildings, and promised landscaping has not eventuated. Feelings of loss reflect wider concerns and are not confined to effects on them personally: "it's the finest horticulture land in the world... it's a tragedy, you can never go back".

Significant change has occurred where horticultural processing facilities have been developed and extended. Residents have been subjected to recurring applications over many years. Originally they were living in a quiet rural area, mainly surrounded by orchards, now they have large industrial activities close by: "traffic horrendous, a very busy place...more transient people" [122]. Operating hours are long, seven days a week during the season, disrupting sleep. Families are fearful about traffic safety: "when the pack house is finishing work they go flying out of there". The lighting is resented (and sometimes intrusive), and "there's parts that are a bit of an eyesore which I questioned at the time that they said they were going to fix but they haven't". One person sold to the company and has moved away. The development involved a massive excavation surrounding the house on three sides.
In another case people had bought on the understanding that the operation was low impact with only two to three people coming in occasionally, because all the smaller operations were being phased out, but "the impact increased by 500-600%. Compared to what it was before ... it's absolutely ruined ...there's always people there...[that] creates that feeling of unease ... it has impacted on your property

values, made it harder probably to sell". Amenity has been badly affected by storage of old vehicles, rubbish, and trespass, including workers defecating on their property. Physical changes have caused some a deep sense of loss e.g. a stream which "used to be ...deep, crystal clear beautiful water but now it's a silt pond, it's an absolute disgrace. The kids don't want to go there any more". Other neighbours were less affected by changes: "we didn't know about plans for extensions when we bought ... If we have any concerns we ring them up and they're pretty good... it seems well managed" [119].

A common adverse effect was noise disturbance: "couldn't get to sleep because of loud music - loud speakers - doors slammed and cars revved up..." [174]. Complaints were ineffective: "I complained several times about the noise. They got sick of me coming over... they basically made me feel guilty about complaining". Pack house noise includes compressors, forklifts and heavy trucks. Not all interviewees were bothered by noise: "the noise [is] manageable, not that loud — only notice when it shuts down... it's not a problem. We live out that side of the house".

For some, subdivisions, urban and rural, had reduced amenity, and created problems on access roads too narrow for traffic to pass, with inadequate turning space: "most take no notice of traffic calming measures or signs. There's been a few close calls... I've had access blocked". Issues have also arisen when the applicant retains title to access ways and is only interested in maintaining it to their own site, or expects others to subsidise maintenance costs created by commercial users. In one case, the council allowed road access to a subdivision across a local purpose reserve residents had understood to be free from development: "the pleasure of being able to go ... through the valley was far more beneficial than money and that to us is the loss because you can't put it back".

The outcome of one application differed materially from the proposal given approval and the site became accommodation for seasonal workers. It seems that the council itself was also unaware that the consent issued would allow for this intensive activity in a quiet residential area. Residents were disturbed by loud behaviour and drinking at all hours (see Appendix 9). Some of the affected parties

complained several times about the noise, and eventually took some direct action: "now - nothing - it's good". For many of these affected parties, changes resulting from neighbouring development are not minor: "you end up seeing the conflict side, you don't see the good side… and it all changes, it goes downhill [86]".

The Section 94 Experience

The preceding section has outlined how changes to places subsequent to a consent being granted affected participants. This section looks at the s 94 process.

Those Who Gave Written Approval

Those who gave written approval generally had a more straightforward experience: "I just signed the form[61] because …I didn't think we would be affected by it" [212]. One interviewee who gained safety improvements to their dangerous access was less definite about the proposal: "we took a long time to consider it… the agent came back to us several times… they did rattle us along mainly because they wanted to get it done". However it was apparent from the interviews that affected parties who had given written approval *were* sometimes affected, albeit not in their minds to a degree that warranted withholding approval for the development: "you've got forklifts working and beeping that's affecting your sleep"; "sometimes the spotlight gets changed and shines towards house – not a problem – once we rang and it was adjusted… at the moment it's a problem". Despite having said there was no problem with management, the interviewee had earlier needed to take legal action to have an access reinstated. Some approvers were dissatisfied because expected mitigation has not eventuated:

> We feel that the work they did on our section was very poor – the fence…doesn't even line up and meet the other … and that annoys [us] and they didn't do the drainage how we wanted because when it rains there's a puddle. The council have not come back to us at all on anything.

In other instances, ongoing nuisance detracts from quiet enjoyment: "they have a lot of school camps and I love hearing the kids play but when they play stupid games at 10 o'clock at night I've had enough".

[61] There was no evidence of this approval on council files.

Those Who Withheld Written Approval

Withholding written approval began a lengthy process, mostly with an unwanted outcome. Participants living adjacent to horticultural facilities accepted the existing level of activity and had no complaints about those operations. However, the increased scale, and associated effects, impacted significantly: "we were happy to have a cool store but a pack house is a completely different operation".

In some cases, work began without consent and it was only complaints by the neighbours that triggered the consent process: "they issued an abatement notice but … we didn't get the application till 18 months after complaining" [174].

Some affected parties found they were not being given the full facts: "they were saying it was a library and prayer room but plans looked like it was here and it was an ablutions block …They agreed to move it…during that process the other site plans came out for more camp sites".[62] Another neighbour of the same development agreed "the effects were far worse than what they had described" [220]. In another case, two interviewees withdrew written approval: "I lost trust as the applicant didn't openly disclose the real intentions" [180A]. This applicant had only one copy of the application, which 180A was shown and requested to sign. The other person, who was new to the area and thought there was an existing consent, had it for about a day: "I didn't have a chance to read it properly …I thought there'd be minimal changes…. I got something in the mail and some of the details were different and we realised they didn't already have consent" [179].

Interviewees resented applicants presenting the application as a fait accompli rather than undertaking genuine consultation: "I probably would have listened to the application a little more kindly if they had approached me in a different manner" [239], but the applicant did not want to discuss it. "We got so anti because the way

[62] The interviewee claims a real estate agent led him to believe the area was to be residential sections.

he did without any consultation" [33]; "if he'd come along and spoken to us all and not tried to polarise, people may have accepted" [133].

For many it was "a massive learning curve. We talked to some of the neighbours and a lot …felt intimidated by… the procedures ... they have to put in written submissions and…they probably have to pay for some professional expertise… people signed". They sought conditions on visual appearance and stormwater, thinking "there were some things that would be listened to and other things they may have to battle" but the expected certain stormwater conditions did not eventuate and stormwater problems have not been resolved. These residents feel their submissions have not been listened to or valued. Interviewees criticised misguided conditions e.g. a condition limiting the volume of fruit at any one time does not limit the overall throughput including traffic movements. Some conditions have yet to be implemented, including landscaping and road widening.[63]

For those who withheld written approval, the process was emotionally difficult: "I hope I never have to do another one. It's very stressful" [168]. The stress of the situation contributed to a marriage breakdown: "relationship – don't even ask". A neighbour said: "it affected him hugely... In their case it was a big asset - they had plans for the place and it was a downhill slide". The experience has made some bitter and disillusioned: "it makes you very militant ...I have thought of selling but….why should I have had to move? Why should I have to accept a lower price? Why should I have had to put up with it anyway?"

Where the proposed development was going to have such an impact the participants decided to move, the process was inadequate. Given the application, they were unable to find a buyer:

> We…said they needed to consider buying from us… we were the most affected. The company weren't prepared to give us market value so we …refused to sign… they didn't make it easy... As ratepayers it would have been nice for someone to come along and said this is the situation from your point of view. The council didn't offer us anything.

[63] The road widening was commenced late in 2009 following a council warning of enforcement action.

The Hearing Experience

The questionnaire indicated most of those who had given written approval were not served notice of the application, therefore had no knowledge of any hearing, raising questions about the submission process that triggers access to a hearing. Some said they would have gone if they had known: "if it's going to affect me I want to have some say" [207]. Reasons for not attending the hearing included being overseas, medical reasons, and childcare. Those who did attend were sometimes the only submitter present, and found this a threatening and isolating experience: "they made me feel my presence put things askew. I felt railroaded, unheard, unconsidered" [86]. Another who lacked confidence felt the applicant took advantage of his inexperience: "at the time you think what the hell's going on and you're all in a tizz... It wasn't easy and they [the applicant] know that…he'd been there before". Another submitter spoke of "a small army" supporting the applicant: "…they had [an industry leader] who owns the property …they had the noise consultant, they had the traffic consultant, they had a party of about seven and myself".

Preparing submissions was time consuming, even for those with background in the industry: "you have to research thousands of words", and lay people are at a disadvantage, limited to saying "we don't like this, we're worried about that". Even confident individuals used to addressing people found the hearing challenging:

> Quite a lot of people really dread standing up and talking in front of councillors …when you are rudely rebutted [by the applicant's representative] basically telling me that I didn't know what I was talking about… that's why people don't like doing it, because it's quite an aggressive place to be [168].

Interviewees felt disadvantaged by a lack of legal knowledge and not being able to ask questions, correct errors or have a right of reply: "people were interjecting all the time...but I didn't feel I could stand up and say anything… a lawyer …would have been able to pick that up [133]; "you don't have any opportunity to say that's not true …there was definite incorrect information put forward in the rebuttal which

would have been very easy to prove it was wrong" [168]. There was a view that experts tended to "slant their evidence slightly towards the client"; "they didn't exactly lie, it was the way they put things"; and "council …will tend to listen ...and take at face value" what consultants or council staff say. Another obstacle for the submitters was not being allowed to raise new issues "but they raised new issues so how come they were allowed to? I don't know whether that should be there because things evolve that don't occur to you straightaway" [86]. One submitter was more positive: "the hearing was good…the most important thing is that people are allowed to state objections" [174], but this person also had concerns about not being able to ask questions about the applicant's statements, or deviate from their written submission. One outraged submitter raised the issue of what was said at the hearing by the applicant being contrary to what they later put in place: "I can't believe …that the council could come back after having a hearing and say there was nothing they can do. All the stuff they [the applicant] said they were going to do and they breached that".

Whilst some interviewees appreciated the generally polite consideration by councillors at the hearing, a few felt they had not been given due respect and consequently felt unvalued, to the extent that for a couple of individuals, it was a bruising experience: "there's no respect for lay people…when I've been rubbished like I was at that hearing….my faith in the system had fallen apart" [86]. Another submitter said:

> I felt the council was just telling me to go away, I felt like a nuisance. The RMA is just a dance between the council and the applicant and even when I complained, it was like, get out of our little party, you're not invited.

Lack of familiarity with the process and how it operates prompted a vehement response from one person: "I'm a respondent – responding. I expected the council to not be so heavily weighted at pushing this damn thing through", referring to the effect of the planner's recommendation,[64] which the affected party took as prejudicing the council's neutrality. Others failed to grasp how they could achieve the best outcome under the circumstances by suggesting trade-offs (e.g. operating hours), rather than categorical opposition.

[64] The planner's report could not be found on the council file.

One sole submitter objected to a council staff member who

> ...told me I wasn't allowed to oppose this on the fact that it was contrary to the district plan... he told me he'd made up his mind before the hearing — he didn't give me any reasons — he told me I could only oppose it on the grounds of safety.

In this case, the lot sizes complied with the plan but the number of lots off a right-of-way did not. Consent was granted with numerous roading conditions although these did not address all of the adverse effects raised by the affected party: "...you've got a group of councillors...in a position to decide ...whether they are legitimate concerns or not legitimate concerns. When it came down to it they didn't accept all of my concerns were legitimate and I have to accept that". Overall the hearing experience was a negative one for most:

> I learnt out of this you have to throw a lot of money at it. It's not for the average guy and I simply didn't have the funds at the time to throw at it and I lost my case or my say partly as a result.

The Appeal Experience

Appeals were not to be entered into lightly: "you'd have to feel pretty strongly about it" [119]; "have a very serious reason" [76]. Four of the applications were appealed, two by the applicant and two by affected parties, one of which is still pending. The cost of appeals was an undisputed barrier for some: "we pulled out because it was too expensive" [174]; "if I had the money I would've appealed ... and I don't think they would have gone any further" [86]. One had spent money on a previous consent "I just got worn down and a lot of people will tell you exactly the same". Another who was advised it would cost him an "absolute fortune" said:

> There was still the potential I might lose, especially if the council were adamant it was going to go ahead...It was really a no-brainer. I could either waste lots of money or move on [133].

The Court experiences echoed the council hearings, with the stress, cost, and reliance on experts being more intense: "we had our own observations but they don't mean a thing when you stand up in court ... The number of hours we spent talking about it ...The mental effect...it still annoys us". The legal complexity of

the issues frustrated interviewees. In Court, matters are in the hands of the lawyers, and out of lay control: "I don't think the judge really understood what was going on ...it was virtually left right open[65] for him [the applicant] to abuse it".

One litigant observed:

> You hear about cases that go on and on and you think for goodness sake get it over with, but if you're the party that's being abused you do get annoyed ... If you've got a big wallet you can have a big barrister and you can pay him heaps and he will find some technicality...for the average person like us, you just don't have that clout...it comes down to money that's all it is.

Side Agreements

Information on side agreements is reported in Chapter 5.[66] Interviewees were generally motivated by a co-operative approach: "it wasn't a money thing. We sold it to make it safer. They bought the land at GV....they weren't trying to sweeten us financially". Another has regrets about being co-operative:

> With hindsight it comes down to the fact we were babes in arms ... we could have ground it to a halt – asked for a ridiculous sum of money... we were trying to move it through and do the right thing... our solicitor's saying it's easier to negotiate...It wasn't compensation for change of activity or anything – purely because he built right up to the boundary.

One person was offered money: "no, I said you wouldn't have enough for me. It was never an option...it was thousands but I could have upped it because it was huge to them". Others claimed that the applicants were so confident they would get consent there was no need to offer inducements: "we're going to get this through". Some verbal agreements had been kept, others disregarded. One person asked for landscaping but was refused:

> I felt something was taken away from me [a pleasant back garden] ...all I wanted was what I had... To appease that finance is often used to make people feel better. I would have taken money...the developer said you're wasting your time. We know we can get this road in ...and we have

[65] Court imposed conditions were later amended in a separate council process.
[66] During the interviews allegations were made about financial contributions in return for withdrawing from a hearing and a land exchange enabling additional subdivision in return for written approval.

employed a specialist ... who can put up a case to council and know it will be passed.

Further Developments

Outcomes reported may be temporary: "we... hear ...they're requesting going into night shift and I would imagine we would be approached about that. We never signed anything like that". However the council was in the process of promulgating a plan change[67] to introduce post harvest zones extending permitted activities, including on-site accommodation for up to 75 seasonal workers, and thus removing participation of neighbours. Several participants raised this during the interviews. They consider that consents for upgrades are the only opportunities for communities to have a say about changes. Two people who had given written approval for pack house extensions both expressed concern about the plan change, especially the accommodation proposals. In November 2008, Tauranga City Council issued decisions on a plan change which changed the status of day care, educational and health facilities, churches, and extensions to existing businesses in residential areas, from permitted to discretionary, in a move to protect residential amenity (Tauranga City Council, 2008). Applications to vary conditions of consent have been processed, some without notification, including altering lot sizes (which would enable further subdivision of the balance lot), and amending operating hours.

The Section 94 Process – is it 'just'?

Views on the 'justness' of the process were mixed. Interviewees generally agreed that "people should have to ask their neighbours about what they want to do" [79]; Positive comments were made e.g. "the council timeframes were pretty good. They gave plenty of time to respond" [179]; "yes it was – we were satisfied with how council dealt with it... We had the chance to object" [119]. Some were more philosophical: "you can never please everyone... people will never agree" [33]. Problems with the process which emerged are outlined below.

[67] Hearings on this issue were held in October 2009 (Western Bay of Plenty District Council 2009).

Who is Affected - Notification Issues

Many participants thought some of the applications should have been notified more widely. Particular emphasis was put on effects on the whole community: "it is the whole community that's affected by this" [113]. Where there was only one objector, responsibility for advancing the public interest was raised: "...the rest of the community...were absolutely horrified that ...there wasn't public notification... I've got children, I don't have time to run round the whole community and start canvassing people this is going to happen, that's going to happen" [113]. One individual acknowledged a responsibility for representing the public interest, where the council did not recognise there effects on the wider environment: "I tried to look at it ... because of the community – what about everyone else?" [190]. This person thought notification should be to those "in the direct geographical vicinity. I would do it geographically" because "who decides major and minor?" [190]. Non-compliance with the district plan was also seen as a trigger for notification, essentially a return to the system under the former Town and Country Planning Act 1977 (C. L. Miller, pers.comm 2009).

Cost

The cost of defending quiet enjoyment was frequently raised, and was undoubtedly a barrier: "I knew it was totally out of my control unless I was prepared to spend 20K on a solicitor" [190] (from a person with an obligation to a wider public interest where no-one else would be challenging the decision). Other typical comments were: "they would've had a budget for litigation but we didn't" [123]; "it's not fair; it's not a level playing field... they threw hundreds of thousands of dollars at it" [113]. For some, money was spent on appeals to no avail. Costs on appeals are frequently out of the control of the affected party: "it went round and round because the appellant changed from one planner to another and had a different lawyer and every time something came out we had to respond to it" [168].

Interviewees knew they could buy the expertise, but this was resented: "you think the council's doing that - taking care of that on your behalf, otherwise what are you paying rates for?" [34]. "This Act is so convoluted and requires expensive

consultants to argue the point on every little point - it's only for the rich" [86]. It was suggested that "where something is contrary to the district plan there should be financial help for ...those opposing. Otherwise everything is in their favour. I can't afford it - it cost me enough talking to my lawyer" [133].

Relative lack of power of affected parties

Affected parties were perceived to be in a weak position relative to the applicant and the council. Affected parties felt applicants with resource consent experience had an advantage:

> They had pages...the money they had spent, it was clear it was going to be bulldozed through and there was nothing we could do... the company knew what they had to do - they were well-informed" [123].

An applicant "will invest money into getting the decision they require - they will confuse council, get over-technical" [190].

Council hearings are relatively formal: "it does intimidate a lot of people" [239]. The reality of the process was:

> If you are a private citizen you are usually up against professionals who know the hearing committee because they have probably been before them again and again. If you've done your own submission you are quietly listened to and taken no more notice of [168].

Although these points relate to cost, they are also about how knowledge is valued and weighed, with expert evidence 'trumping' lay submissions. It seemed, especially in relation to noise effects, that councils adopted the recommendations of the applicant's experts without question. The formality of the Environment Court with its rigid evidential procedures and legal conventions was also disempowering.

Power can be exercised by the applicant in the way the application is explained, including "spin" promoting the economic benefit for the district, and the down-playing of any adverse effects, as it is natural that negative aspects won't be emphasized: "you only get the positive side" [76]; "there might be points you haven't considered. If they come up later you're stuffed so the best option is never sign everything so you get more information" [179]. One applicant made a couple

of personal visits and "went through quite detailed explanation as to how they were going to go about things – I guess they were selling it to us as well" [119]. In some cases the applicant exercised power through behaviour: "his approach was aggressive" [133].

Applicants rarely approach affected parties with an open mind: "this is what we want to do — we'd like to work with you to see if it's ... suitable in this neighbourhood" [168]. The affected party is automatically put at a disadvantage because of being in a reactive mode:

> Immediately you're on the back foot...you're immediately giving the idea that what you're going to say is going to be negative... It's actually quite a debilitating situation to be put in because you may feel it's [the application] a totally unsuitable situation [168].

Some interviewees felt the applicant was favoured because they were well-known: "they may be people in the area who have a lot of clout" [190]; "I felt I was just going through the motions. I could feel it was a done deal" [113]; "if you have the right ears and you have the right people acting on your behalf you'll get it done... they were all on first name terms, they were all buddies" [133]. Some saw a definite conflict of interest: "if they can get a subdivision through ...they can get lots of money [rates]". The planner's recommendation reinforced feelings of disadvantage: "...it was a foregone conclusion...the councillors... 99 times out of 100 will vote in accordance with the recommendation of council staff" [133].

The perceived inequality of power was reflected in the level of confidence interviewees expressed in participating in the process. Interviewees who expressed confidence were limited to those with a professional background or in business. One person's confidence was misplaced: "I felt confident — it's a simple process — I got the info, wrote a submission, got a receipt" [207]. However, council files revealed the "submission" was a letter to the council opposing the development following the applicant's written approval request. When the application was notified, they did not submit, apparently thinking they had already done so. Another inexperienced person said "I thought it was fair until our conversation ... I

would hate to think that it might get bigger. It worries me that I might not have the control that I thought I was going to" [121].

The common experience was summed up as: "it was thrown at us and we had no knowledge, we were out of our depth" [199]; "you think you're right but you don't know the right way to go about it...with what we know now, [we] should have been logging truck movements and things". To most people the RMA is "something out of the ordinary that generally people don't deal with everyday" [179]; hence those only given a fleeting glance at the application lacked confidence to demand adequate time to study it. Affected parties are isolated, and whilst "if they had got us together and talked to us — it would have been good to have met with all the parties" to "know if it's a true reflection of what people think" [207], such action rarely occurs as applicants seek to obtain written approval one by one, this being in their best interests.

Information and communication

Many interviewees experienced difficulty in communicating with council: "getting hold of people in the resource management department is a nightmare because they are never in the office and they never ring you back" [174]. Participants expected the council to keep them fully informed from an early stage and plug information gaps in the application: "it was up to the objectors to do some sort of guess work... to work out what the adverse effects are going to be" [239]. For several participants, getting the full story about the likely ultimate effects proved problematic. One applicant had given affected parties a copy of the application. It was addressed to the council. The affected parties believed it was the application submitted to the council, and most of the neighbours gave written approval. Although the application was later notified to affected parties, some claim they did not receive it. Some who did receive it noticed the site layout was significantly different[68] to the one they had originally seen, but others "thought it was the same — they picked it up — yes we've dealt with this and put it in the rubbish. Who has got time ...to ... check is this the same word for word?" Those aware of the chain of events were incensed: "it was perjury, it was lying, it was deception, it was all of

[68] The researcher was shown three plans. Council files contain only two of the three site plans.

those things ...the council agreed that it happens. They said it was OK... how can you say that is a good system?" These events were corroborated by other interviewees: "the whole process and the way it was handled ...was shocking...council should take responsibility to ensure all potentially affected residents know what it is about" [220]. One person, who had given written approval,[69] did not know that the consent granted was different from the original application:

> Whether their consent allows them to do that[70] I'm totally unaware of it... they should have notified us that the permit had been issued ... you can't just change the rules halfway through the game – that's not fair [212].

A similar situation arose with another application: "it was portrayed as something quite different as to what was intended" [239]. As with the previous example, the apparent similarity of the documents confused people: "you make an assumption it's something you've already read. They need to highlight any differences from the application that was made. There is that risk that what they present to council is not what they show the neighbours" [179]. These sentiments were echoed for a third application: "what the applicant brought round was completely misleading...until an application has been lodged with the council I don't see how you can be expected to give consent" [133].

The complexity of information was also a barrier: "there's older, retired people around here... you could see they couldn't grasp it... it was too much... for them" [199]. Another said "you should be able to just look it [the plan] up ... but I couldn't understand it. I've read it. I've struggled to really work out how it affects us" [33]. Another assumed "Rural G...was localised agriculture", not processing facilities: "didn't think anything of it." "It's too specialised...you don't know the ins and outs, you don't understand the terminology... people we employ in council understand these things ... they have degrees" [190]. A particular issue that confounded affected parties was the application of technical definitions. In two of the applications, the case turned on how one word was defined in the plan, and the

[69] There was no evidence on council files of this person having given written approval.
[70] It appears a loophole in the plan may have allowed for activity not included in the application and not expressly controlled by the conditions.

common sense, everyday understanding of the affected party was not the one that applied: "the legal side of it[71] meant they won".

Unfairness was also perceived in the way information was collected and applied: "the whole thing can be skewed – when they did the sound tests they came out in the evening when there was nothing happening" [33]; "The Court ...had a look at the operation and thought it wasn't that bad but ... they never saw it going, and I bet ...no big articulated trucks drove in while they were there...anything can be contrived".

One person believes the council gave incorrect information in response to investigation of the plan provisions for the area prior to purchase:

> I did due diligence ... I went to council and asked what was going to happen in the 10 year local plan? – housing there [not a road]. Councillor [name suppressed] said [the council] want to keep as much green space and there's no way they can get this passed but the developers and [name suppressed] appeared to manipulate the system.

The Approach of the RMA

The fundamental basis of planning "caught out" many of the affected parties. Firstly, the general planning approach of setting out permitted and controlled activities and standards in the district plan, but allowing discretionary applications when these standards and conditions are exceeded, creates uncertainty for affected parties as they cannot know what might establish in their neighbourhoods: "I believed that the district plan was there to protect me as a ratepayer, to protect the environment in the district" [133]. The degree of uncertainty existing in the planning system was not well known or understood, and was not accepted by most interviewees, who vehemently believed there should be no discretion. For some, the concept was simply incomprehensible - "it comes back to rules and regulations...that applied to that situation – there's a right to expect regulations to be applied" [119]. Those who had been involved in an earlier plan change were deeply disillusioned:

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[71] Definitions in the plan.

> We really didn't think that deviations and variations [to the plan] could be had... if the ... plan ... allows for various activities in certain areas then everyone knows where they stand and you can have your quiet possession [168].

One justification for not allowing discretionary consents was explained this way:

> The ...plan can and should override what a landowner might want to do at a point in time – otherwise you can't plan. You shouldn't take little piecemeal bits ... Who's benefiting? The developer - one person...if there's enough people in the community who disagree with the plan *then* it can be changed [190].

Another point made was that allowing standards to be exceeded was unfair to those who had complied with the standards. An interviewee who had been in business said "it...is in the rules if you read them...if people in business see an opportunity they'll pursue it" [212].

The 'enabling' approach of the Act creates ongoing risk for affected parties. Applications may be lodged for just about anything, provided it is not prohibited:

> You can buy a bit of land and get a go ahead ... to do whatever you want... the applicant says ... I'm going to do this ... and you've got to fight that if you feel it's not suitable... if there has to be a variation council should pay the cost of all the people who object - stop it in its tracks unless it's really, really important [168].

This person also commented:

> Great emphasis [is] placed on the word 'mitigation'. If an applicant can use it effectively this will often sway decision makers. However mitigation can be ineffective unless these conditions...'policed' by the council. [It's] often left to local people to chase up the council or developer [168].

Strong views were expressed that an applicant's track record should be considered: "these individuals ... cut corners where they can. I'm in the industry and I've seen what they've done"; "having had his history ... they should have stopped it altogether because he had flouted them". There was also a view that consents should be able to be revoked where not complied with: "all the evidence that was

presented by the applicant... the moment they got their consent they went about breaching everything they said at the hearing... would people be so blasé and arrogant if they knew their consent could be revoked?"[72]

Implementation

Implementation of RMA processes, the district plan, and the monitoring and enforcement of resource consents emerged as major issues for participants.

The Section 94 Process

Interviewees thought council should ensure people are totally aware of what they have consented to, ensure the application they are considering is what affected parties have in fact given approval for, and consider all effects, including effects on those who've given written approval. Councils were seen to have a duty of care to their ratepayers and residents, and should avoid granting consents that were likely to lead to future problems. Together with the general sense of powerlessness, this resulted in a belief that the council should be actively defending the interests of affected parties: "...the council is in charge of the area...we expected the council to look after our interests" [174]. There was also an expectation of such service in return for rates: "we vote council in and we pay them a wage to look after those interests for us and they never did it ...so why should I have to pay to do it myself, I've already paid for it" [33]; "should a 'respondent' [i.e. the affected party] have to spend money on someone else's activity? Shouldn't the council be doing it?" [86]. Interviewees expected the council to actively assist them e.g. by giving advice on what sort of conditions could mitigate their situation, such as widening a driveway: "We needed someone from the council to come along and say do you need any help" [123]. A further rationale for positive action on behalf of affected parties was their lack of knowledge and experience:

> We didn't know what we could insist on ... There're so many areas that you can be hoodwinked by someone more informed because ... you'[ve] never come up against it before. You're just disadvantaged from the beginning and you have to pay money to find out...you didn't ask for that [development] [34].

[72] New provisions in Section 132 provide for the cancellation of a consent under certain circumstances are likely to be welcomed by affected parties.

The fairness of the process depended on the ethics of the participants: "there's the moral thing, hey this is not what you said ...how you're meant to do it" [199]. Concerns about conflict of interest were not uncommon – in five applications, allegations about improper influence of, or on, politicians or decision-makers, were made. Some interviewees felt the council had let them down: "I don't blame the RMA but I blame the … weak councillors that let it happen" [113].

The District Plan

Other complaints related to fundamental shortcomings of the plan, and how the plan was interpreted and applied. In assessing the overall 'justness' of the process, interviewees expressed strongly held views that the councils had failed to address long-term planning issues and management of growth was poor: "it was obvious it was going to change…." [168]. Another said "you devote your whole life to trying to sort out change" [33]. Long-term residents in development hotspots as a result of Tauranga's explosive growth had no idea when they moved there that their neighbourhood would change in the way it has. They nevertheless believed the district plan should allow for change: "good planning makes a good environment for people to live" [168]. Participants did not oppose growth but criticised councils for allowing activities in inappropriate locations: "I've got no problem against expansion but you've got the wrong area….let's find some land that's going to have minimal effect on people, get it into an industrial area". A common view expressed was "I'm all for progress no question" but "the district plan needs to give some certainty" [220].

The study highlighted the conflicts of use generated by rural subdivision: "with all the new houses across the road …it's becoming a lifestyle community just because of the way the council's let the subdivisions happen — we're the last working orchard on the road". This interviewee considered that management of their land had been significantly affected by the adjacent residential developments. Elsewhere conflict had been exacerbated by previous planning decisions that had not addressed the full implications of allowing lifestyle blocks adjacent to a horticultural facility.

There was a common expectation that the council would uphold the district plan: "it was contrary to Smartgrowth[73]...Regardless of Smartgrowth the ... application was still contrary to the plan... [which] gives developers a framework in which they should be working" [133]. Interviewees also noted that agreements made as part of a consent application could later be overturned by a plan change: "I don't think that's fair to the neighbours" [121].

A common theme applying across both councils was dissatisfaction with how the council enforced the rules: "if council set the rules they need to follow up on it" [122]. Response to complaints was slow and indecisive, especially noise control. Residents could not get an officer to come out after hours, during which time contact was restricted to answer phone and email. This went on for 18 months:

> We would complain about one event and two weeks later still waiting for feedback and there would be another one... They should have enforced the abatement notice... a hell of a long time to put up with it breaking the law having functions there without a permit [174].

In another case where the complaints officer did not respond "it wasn't until we ...went to a solicitor who put us on to a barrister who started pushing the council that things started to happen" [33].

Consents

Councils were criticised for inconsistent decision-making and not using common sense in applying conditions e.g. applying transferable development rights to an area containing significant biodiversity, but not requiring it to be protected;[74] not incorporating better traffic safety into design; and allowing commercial activities that relied on attracting the public to the location but not requiring the applicant to meet council roading standards: "if I sound frustrated – golly – it's basic stuff".

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[73] Smartgrowth is an integrated action plan for managing growth in the Western Bay of Plenty involving that council as well as Tauranga City Council and Environment Bay of Plenty (Smartgrowth, 2009). It has identified areas for urban expansion which have now been incorporated into regional and district planning documents, but the lag between developing the plans and giving them legal weight created conflict in some situations.

[74] A variation to conditions was made when council became aware of this. This consent had three variations to conditions within a few months of being granted, two of which were to correct errors. Affected parties were not involved in these amendments.

Better consideration of neighbours was important e.g. an apartment building blocked television reception and overlooked a courtyard where the affected person was not deemed an affected party: "it does bother me" [207].

Allegations of poor practice included not carrying out a site visit and the standard of the planning report: "council staff...were very incompetent... it was a pretty basic report.[75] There were a lot of holes in it" [239]. However, one person expressed surprise at the thoroughness of the council's response, having expected consent to be granted (it was declined), and expecting to have to "put up a real fight for it to be turned down" [180A].

Monitoring and enforcement of conditions elicited some of the strongest criticism expressed by the affected parties about their experiences. Interviewees expected conditions to be enforced to the letter. About half had criticisms of council enforcement: "once a consent has been issued councils don't want to know anymore... They are the people who give consent. They control the ...process" [239]. Often conditions were only implemented following complaints: "when I went and saw the council they put all these trees around. They had to do it - it was part of the application". Although it was thought that it shouldn't "be up to residents to tell tales..." [180A], some interviewees were resigned to the fact that council would do no monitoring and would wait for complaints. Getting compliance was a major effort:

> Monitoring of conditions is a major problem...You have to gird up your loins and fight. In the end I went to one of the councillors I happened to know... [the] landscape plan was agreed to ...but what was done was much lesser. I went to council and council made them make some changes but they were still lesser.

In another case it was a question of interpretation: "there's ...a grey area between enforcement and how you do it." The fence was built, but not how the affected party requested it. "You think, well you've got a fence, it's not perfect – are they going to rip it down? No way. I've virtually given up complaining". One person observed that conditions "are part of the hearing or negotiations" and are

[75] The application was subsequently appealed, and is still pending.

sometimes applied by councils to make an application appear acceptable without a commitment to apply them.

Elsewhere, repeated complaints were repeatedly fobbed off (see Appendix 9). Eventually a meeting was held with the mayor and all the staff that were at the hearing: "they were all just quite stunned ....there was a lady there who ...said 'I had no idea they were going to put things like that in there'. Those were her exact words ... She was the senior environment planner". This account was corroborated by another interviewee: "the other residents were far more aggressive and far more badly affected and quite sensitive to what actually occurred... this hadn't gone through by the book. I could tell that by body language".

Motivation for Objection

The researcher explored with interviewees, particularly those who had given written approval, what they would object to. Unwanted developments were primarily activities that generated noise, particularly at night, or directly impacted on their domestic peace. "I would say no to 24 hours" [121]. Visual appearance was important to some: "I would want whatever was built to fit in with the area... we don't mind development... if you want to put commercial development here you show us how you are going to landscape it" [113]. The personal circumstances of the person, and the degree of change from the existing character of the area were significant influences. One person stood out for saying 'no' to anything. He did subsequently make a submission on the district plan review of post harvest zones, perhaps suggesting that his threshold of acceptance had been reached.

Several interviewees expressed more altruistic, political and moralistic motivations, depending on what the development was to be used for i.e. if it was for the public good and who was going to profit from it. The only subject in the study who was renting commented that they "would push harder if we owned our own property — people with life savings invested would fight a lot more" [79]. The overwhelming response of the interviewees was summed up in this comment "it depends on the circumstances...depends on how badly you're affected" [123], and it was pointed out that in terms of general motivation:

> It's only when you get affected yourself you sit up and say this isn't right... If it personally affects you then you start showing more interest. It's easy to be apathetic..." [33].

A small number said they would move and/or go to appeal if their quality of life was badly affected. One interviewee who had moved as a result of an application commented that "if it was right now it would be hard – the market's down so it would affect us" (because it would be more difficult to sell).

Interviewees were asked how they themselves would go about doing a development, to determine whether a different role may elicit differing motivations. Not surprisingly, the responses reflected a consultative and considerate approach they would have liked to have experienced themselves i.e. talk to the neighbours, follow the planning rules, taking advice from planners and lawyers about what could be done, and technical experts about design. However, one person with business experience of development reflected the realities of a business motivation:

> We spent a fortune... Eventually we got council on side. Basically it was a matter of just courting them ... Personally I'm one for the consultative process. I'd rather say we are going to do this, we are allowed to this, and we are doing it for these reasons and we're telling you this so you'll know why – you've got no rights but you'll have information [212].

Others simply accepted the planning standards: "we're not allowed to do [any development here] ... we wouldn't apply to subdivide because the plan says you're not allowed to" [119].

NIMBYism

NIMBYism was considered just human nature: "you have to be self-interested don't you. You've worked for what you've got and you want to protect it" [179]. "Anyone who's going to have some huge change is going to have some reservations and [will] want to have it built somewhere else that's a natural reaction" [133]. For most it was self-evident:

> Submitters often have genuine reasons for their negative reaction to an application, but seem to be treated as NIMBYs regardless of the issues. People have to realise that you're not going to ...spend a lot of energy and time on something that's at the other end of town...you're bound to be

looking at that's going on in your own neighbourhood. If it's close to you you're going to be the most affected party and in actual fact you're the only ones that are notified anyway [168].

The only person who thought NIMBY reactions were unreasonable was herself unwilling to live near certain types[76] of activities. There was a common view that a NIMBY was no different from any other situation, and that a fair process to consider how people were affected was necessary, including compensation for loss of quality of life and property values: "they should have the right to move if they want to and be recompensed for it" [212]; "if it's going to affect your lifestyle or value of your property then they need to look and …buy a certain amount of land in a radius" [122]. The choice to move without being financially disadvantaged was seen as a factor to be budgeted for in the overall development: "people shouldn't have to move if they don't like something" [121]. Throughout this discussion, the need for better *planning* of developments that impacted on people and communities was raised: "whoever puts these plans forward needs to have done some logical thinking" [190].

Some interviewees were upset to have been called 'NIMBY' as they were only opposing things that were contrary to the district plan: "[it] felt very derogatory — labelled - the applicant saying anyone who doesn't agree with me is bound to be a NIMBY… …[we were] 'NIMBYised' … disregarded" [168]. Two people objected to the term: "the connotation is …disrespectful of the community… the suggestion that the public that are affected don't have to be considered because they are just NIMBYs" [86]. Others were blasé about being labelled: "it doesn't worry me – they can say what they like" [174], suggesting that perhaps personality may play a role in how people feel and respond to activities affecting them. A common, strongly expressed response was that if something came along, however important, that affected their quality of life, their response would be described as NIMBY: "if it was a power station or prison it's going to be NIMBY and they can build it somewhere else" [113]. In the eyes of the interviewees, NIMBY was normal and to be expected: "just protecting their way a life" [76]. For most of the affected parties in this study, the label and phenomenon of NIMBY was irrelevant – what

[76] NIMBY was discussed in the context of a large development that was considered to be in the public interest e.g. rubbish dump, wind farm, prison etc.

matters to them is how they are affected. For these participants, objection is justified:

> We're paying the price of someone else's development. We bought the place under the understanding that that's how it was ...going to stay... If everything was done as it was supposed to have done I would have had to accept it, but when you go through the process and how you suffer then no, I'm not a NIMBY [34].

Postscript – Outcomes for the Affected Parties

There have been other intangible outcomes for the participants. The process had been a learning experience: "I can probably represent myself better than I could before" [86]. Some attitudes had changed: "I had a preconceived negative view of the RMA but it seemed a fair process – I could see how it helped people but would never bother going through it because of the expense" [180A]. Other outcomes included realising the importance of reading the fine print, and taking professional advice, despite the costs. The importance of communicating and working with neighbours was recognised: "we should have made more of an effort to talk to the neighbours ... they may have been more aware... and that's probably why they didn't sign" [121]. Another said "I have the impression if it was just me and no-one else, nothing would've been done" [76]. Some advise "don't sign - once you've signed all your rights have gone" [133]; and "talk is cheap, get everything in writing" [199].

Others questioned whether their involvement was worthwhile: "it involves your whole life – years gone" [34]; "at the end of the day you have to accept the decision... I got the footbridge for the children – I achieved something". However some of the negative experiences seemed to result in more hardened and less tolerant attitudes: "my advice to others is be hard - look after your own interests and be forceful about it. Nobody's going to take any notice until you squeak" [34], and the experience has reinforced the benefits of self-interest: "look carefully at the negative side and how it might impact on your quality of life" [76]. Some will consider moving if further threatened by development "sell the property, go somewhere else before your property devalues sell it — you can move" [168].

Incremental development had compromised development options for some: "we have been severely handicapped ...because we have been completely boxed in. More change is imminent for the area - when the designated road is built this will affect surrounding use but there is no planning for changes that it will bring" [168]. An orchardist feels forced to sell "because you can't spray, you can't operate so you sell your high value piece of land and move further out". Some are diffident about opposing anything because they expect a lack of co-operation and obstruction from neighbours if applying for consent themselves.

About half the participants made additional comments at the end of the interview, generally relating to their own personal experience, which differed markedly: "it was pretty straight forward" [123], to the opposite extreme "we didn't like the change... when we came here...you drove through an orchard belt ... but now we feel like we're in a suburb". Affected parties felt they had been let down by the council who had missed opportunities to achieve better outcomes: "they've got to take account of the people who live in the environment. If they had worked harder with the community they would have got better results...they could have done it in a way that had less impact" [168]; "we live in a lovely place and it's annoying that no one couldn't have more vision...that bit of green land there wasn't a big cost to development" [190].

Summary

No material differences were discerned between the two councils in the study in the implementation or outcomes of the s 94 process.

Participants' level of awareness of the planning process was generally limited. Interviewees thought that permitted standards could not be breached and did not understand the concept or practice of discretionary activities. This resulted in false expectations about land use change and feelings of disillusion, outrage and dissatisfaction with the council. The s 94 experience and the current plan reviews raised awareness of the plan generally. Most of the interviewees who had awareness of the district plan withheld written approval.

All of the interviewees were affected in some way, both positive and negative, by the changes in their neighbourhoods. Significant changes in scale, and the introduction of noisy activities into residential areas, caused genuine distress to those most affected. What mattered most to the interviewees was the quiet enjoyment of their homes, and their rights to defend that. Knowledge of rights was limited, sometimes inaccurate, to the detriment of the affected parties. Even at the end of the process, knowledge of rights was patchy. When an existing activity sought to expand, and when activities commenced without consent, affected parties found their rights to be more constrained.

Most thought that the council's role was to protect the community's interests and some were cynical about decisions being made supposedly in the public interest which had negative impacts on residents. There was agreement that councils had a responsibility to protect neighbourhood character, and the plan was a legitimate mechanism for this. Trust in councillors was low.

Interviewees were not opposed to development but considered it should fit in with the environment. Many adverse effects on neighbours can be addressed through design of the development and implementation of consent conditions. Poorly drafted conditions or missed opportunities to better provide for adverse effects on affected parties seemed relatively common. Adverse effects were sometimes not avoided, remedied or mitigated to the satisfaction of the affected parties. Some of those who had given written approval were being adversely affected, but felt for whatever reason that the level of effect was tolerable or to be expected.

Those who withheld written approval found the s 94 experience stressful and emotionally upsetting and some are fearful of future developments. Both the structure and conduct of hearings intimidated and frustrated participants. The costs and emphasis on expert knowledge were seen as a barrier. Affected parties felt at a disadvantage because they were in a reactive situation. Side agreements were uncommon, but some agreements were not implemented as intended. A quarter of the affected parties felt some pressure to give written approval.

Problems experienced by affected parties included the notification decision itself, which often had the effect of isolating affected parties from their wider neighbourhoods. Often communication from the council was poor. Information was incomplete and complex. Sometimes applicants gave false information, and some affected parties agreed to applications that were later altered to a form they would not have agreed to.

The enabling approach of the RMA and poor forward planning resulted in uncertainty for affected parties who criticised piecemeal, ad hoc development. Poor implementation and enforcement of plan provisions and consent conditions was also experienced. Affected parties believed that councils should actively defend and protect their interest, and many felt let down by their council.

NIMBYism was seen as a normal and justified response to impacts on peoples' lives. Participants were primarily motivated by effects on their lifestyle and amenity values but some demonstrated more altruistic concerns for wider public interest and resource management issues.

The experience resulted in a strong learning curve for participants, including increased awareness of planning rights. Self-confidence was increased but feelings of bitterness and loss remain. The study highlighted ongoing change and uncertainty, with plan reviews, plan changes, and new consent applications.

CHAPTER 7 DISCUSSION AND CONCLUSION

Introduction

The study incorporated a variety of typical consent applications, and participants reflected a range of responses to them including support for development, the undecided, and those who withheld written approval. The methodological approach precluded verification of some facts, as some data, such as correspondence and reports about complaints, were not found on council files, and the council officers involved were not interviewed. A case study approach may have addressed this, but it would have had other disadvantages, as most of the planners involved with the applications no longer work for the councils concerned. The personal interviews undertaken enabled a deeper understanding of what the RMA means for affected parties, which was the aim of the research.

Motivation for Behaviour

Social-psychological approaches suggest objectors are motivated by a range of factors apart from financial self-interest, including a civic obligation to oppose unsustainable development (Ellis, 2004:1554). This is reflected to varying extents in this study. It was found that affected parties largely based their decision to give or withhold written approval on the effects of the proposal on their personal situation. The character and amenity of the immediate neighbourhood, particularly noise such as machinery and traffic outside normal business hours were the major concerns of participants. Although distrust of politicians and officials was evident, it was not a basis for objection. There was no evidence to suggest that any of the affected parties opposed an application for the sake of opposing. Nor was there evidence of objection based on exaggerated fears that change would bring outcomes that did not in fact eventuate. The questionnaire results indicated decisions on giving or withholding written approval had no relationship to wider social, political or environmental attitudes. This may have been an artifact of the methodological approach or an example of individuals giving responses they think are socially acceptable. During the interviews it became apparent that socio-political attitudes and personal values did feature in people's thinking. Such attitudes may not have driven the decision to give or withhold approval, but they emerged during the discussion about it. For example, those giving written approval thought the

development had economic or social benefits; several who withheld approval felt the development was not consistent with good planning. Three individuals had given written approval because they considered they were not affected but during the interview expressed various complaints about the activity that indicated they *were* adversely affected in an ongoing way by noise, lighting and vehicle issues. As the applications were for extensions to existing operations, these individuals expressed the view that "we can't stop progress" [122] and saw that withholding approval was unjustified.

The study found a strong sense of citizenship and community, expressed as an emphasis on obligations to neighbours and fair play. Webster's (2003) highly economic approach to neighbourhood rights was not strongly reflected in the research. Property values were mentioned by eight out of 241 persons in responses to resource consent applications which were perused in council files. None of the respondents to the questionnaire raised this specific point in their responses, although three had mentioned it in formal responses to the council and five interviewees made comments indicating property values were important to them. Three interviewees mentioned the effect of activities on the potential sale value of property. Two participants indicated their property values had been adversely affected, one of who eventually sold to the developer at market value.

Psychological Factors

Manzo and Perkins (2006) report the importance of 'place' to people, which was reflected in this study. Most of the participants expressed strong *neighbourhood* feelings, not limited to their properties. Associated with the importance of place was a desire for control over what might affect it, consistent with Control theories (Gifford, 1997). Edney's work on territoriality may help to explain why concerns of participants were expressed primarily in terms of how their enjoyment of their property would be affected, rather than the economic effects on property values. Interviews indicated that place was important for the attributes valued by the occupants – peacefulness, privacy, security, and reflecting their aspirations. Stimulation Theory suggests that when levels of stimulation changes e.g. noise, feelings and behaviour may also change (Gifford, 1997). Noise was the most

common adverse effect experienced by affected parties and appears to have the most impact on a personal level, as well as being difficult to mitigate. Frequently applicants argued that the noise of their activities was no more than was permissible in a residential area. However, noise emanating from business activities tends to be more frequent, regular, and sometimes constant over long periods, or outside standard business hours. Business traffic noise may also be different in nature, from heavy vehicles such as trucks or buses. In this study it seemed that noise levels were essentially being set based on the recommendations of the experts for the applicant. This study suggests more research on the levels and effects of noise on residential amenity is required to provide appropriate guidelines for district plans and resource consent conditions to avoid, remedy and mitigate adverse effects on affected parties.

Under s 94, consultation is carried out by the applicant, and personal factors have the potential to sway the affected party's response. Anecdotal reports of neighbourly feuds obstructing routine development applications were not evident. However, some interviewees who had not given written approval indicated that, had the applicant approached them in a less confrontational or arrogant manner, they may have eventually provided written approval after working through the issues. This suggests meaningful involvement of affected parties should occur at early stages of planning a development (Beatley, 1994; Miller, 2004) and that inter-subjective approaches should be used (March, 2003). More consultative approaches which may defuse personal conflict, such as a pre-hearing meeting under s99 or mediation under s99A, are infrequently used. In one case participants said that by the time they realised the issues could not be resolved on a personal basis, conflict had become too entrenched for such methods to be effective. It is inherent in human behaviour to respond negatively to a perceived threat to one's territory, but the planning process and its rights of participation are a means of managing such responses.

NIMBYism

Participants were clearly motivated by self-interest, accepting developments they saw as adding value to their community and opposing those perceived as impacting

negatively on them and their community. They acknowledged the existence of NIMBYism and some declared themselves as reflecting such attitudes but saw it as part of human nature and not an attribute to be demonised, consistent with the views of Ellis (2004) that the NIMBY syndrome is an oversimplified interpretation of objection (Ellis 2004:1552). Most people only become involved in the planning system when it affects their personal interests (Ellis, 2004), and Dear's (1992) point that indifference increases with distance was raised by one of the participants, reinforcing the case for a *neighbourhood* view of who is affected. The study results reflected the views of Lake (1993) that although opposition may have an economic component, other factors such as amenity and neighbourhood character are significant. In this study, negative reaction was engendered because facilities were perceived as not 'blending in' (Dear, 1992) or being a 'good fit' with the neighbourhood. Participants were strongly influenced by the degree of change to the status quo, and considered a lack of certainty about how change could occur as unfair. There was no indication that opposition was a proxy for some wider world view. However, none of the applications in this study were for major facilities which would be more likely to trigger broader socio-political responses.

Differing responses to being labelled a NIMBY suggest personality may play a role in how people feel and respond to activities affecting them personally, and further study of this aspect of giving and withholding written approval should be investigated. The responses of one passively accepting participant indicated that he would be vulnerable to an unscrupulous developer where a district plan was enabling and council took a "hands-off" approach to effects on affected parties. His situation raises and accentuates the question of how much, if any, protection should be given to affected parties.

The psychological aspects of motivation for resource management decisions proved difficult to assess in the context of this study and provide a further line of investigation requiring collaboration with psychological expertise.

Public Interest

In the context of the RMA, sustainable management becomes a proxy for the public interest — the "good reason" (*McNamara v Tasman DC,* W072/99) for submerging

an individual's interests to that of the community. The role of planning in weighing the interests of some at the expense of others is the core tension underlying this research — for example allowing incremental expansion of horticultural facilities at the expense of the amenity values of neighbouring properties has been justified in the public interest arising from the economic value of the industry to the community as a whole.

Participants were not motivated solely by self-interest, and two thirds of the respondents, just under half of whom had given written approval, thought the application should have been publicly notified because of public interest issues including traffic, stormwater, loss of reserve land, and activities involving liquor licenses. Two interviewees recognised a wider public interest issue, yet were the only submitter. The council had not recognized that the effects potentially impacted on the wider environment. This response was consistent with the contention of Ellis (2004) that a sense of civic obligation is a valid motivation. There was some evidence that this role was also being exercised by some of the other participants, especially those who wanted the council decisions to comply with the district plan or more plainly because "the proposal, in my opinion, was contrary to good planning" [239]. One participant mentioned making a submission because they thought no-one else would, and a submission should be made. The s 94 process raises the question of how the public interest is to be upheld where the public do not have rights of submission. The assumption is that this is the council's role. However, it was evident from this study that the council did not always operate in this manner. The s 94 process means that any public interest aspects of an application not publicly notified can only be challenged or championed by an affected party. Participants also raised planning issues that have public interest implications including the degree of non-compliance and changing the use of land or character of the area from what was contemplated in the plan.

This study found inadequate long-term planning resulted in uncertainty for existing residents. In 40% of the applications in the study, lifestyle subdivision resulted in a predictable conflict between the lifestyle use and existing uses. Purchasers of lifestyle blocks were sometimes confronted with quite intensive visitor, or even industrial activity. In many cases, the level of noise and disruption to neighbours

indicates that a much greater separation of residential activity from rural industries is required, bearing in mind that most rural land use includes a residential component — i.e. farmers and growers live in the rural area too (some of the affected parties came from this group), and their needs should be considered along with the production requirements. In two of the urban situations, better long-term planning would also have avoided conflicts. Residents were entitled to expect that the greenbelt zone in the plan would not be developed for standard subdivisions but ad hoc decisions allowing it to be breached resulted in compromising "creep" that left the plan playing "catch-up". A plan change to regularise the situation was notified just a few weeks after the application was lodged. When a greenfields subdivision adjoining an existing commercial area was being developed, the expansion of the commercial activities should have been anticipated and provided for in the zoning, so that the new residents had certainty as to where they could or could not expect residential activity.

Willey's observation that an individual's or community's interests can be traded away, sometimes repeatedly, to maximise the benefits of others (Willey 2006:372) was borne out to some extent. Four resource consents included in this study had a history of repeated applications for extensions of development on the same site. In the space of a decade, five separate planning processes had affected one of the subjects in the study. This trend for further applications adding to previous development as activities outgrew the terms of consent, resulted in cumulative effects that contributed to negative impacts on affected parties. Business activities generally start small but as the business grows, greater development and intensity is sought, and the existing use facilitates extension. It is the writer's view that 80% of the applications in this study will in the future seek to extend or expand further than their current levels. One participant noted an assumption that certain types of business were "an accepted type for [the] area and therefore should proceed in any form" [34]. The lack of provision by councils for expansion of existing activities was evident, especially for major activities such as the kiwifruit industry. To some extent recent plan changes attempt to address some of these issues. It remains to be seen how effective they will be in reducing adverse effects on affected parties, but the plan change addressing amenity in urban residential areas is an acknowledgement from the council that the rules at the time of this study were

considered inadequate to address all of the environmental effects. Based on responses in this study, rural residents are likely to be worse off if post harvest facility provisions become operative.

Justice

Beatley's (1994:14-15) ethical questions are particularly relevant to this study – *who are* the "affected parties" under s 94?[77] What should be the balance between social utility of a proposed development such as a cool store or childcare centre (rights of landowners to carry out business activities on their land) and prevention of harm to neighbours from excessive noise? Whose values should prevail? What powers and rights should citizens have, and what process should be used in making such decisions? In answering the first question, responses from the participants suggest limited notification should be applied on a wider geographic scale than is current practice to consider effects on a *neighbourhood,* not just the *neighbours*, although drawing the line is always likely to create some injustice. The question of utility is not so much one of whether some development should occur or not, but whether it should occur *at that location.* The lack of discretion for councils to exercise this type of judgment may lead to unjust outcomes. However in many cases, much more could be done to avoid the "harm" done to neighbours through more comprehensive and targeted consent conditions which is discussed in more detail towards the end of this chapter. This leads to Beatley's third ethical question as to whose values should prevail. Most development that occurs is business (profit)-driven. It is not unreasonable to expect some investment in planning and design that would ameliorate adverse effects on neighbours. There was evidence in this study that alternative locations and access were not seriously considered, because the cost was greater, and there is no universal requirement under the RMA to consider alternatives except in certain circumstances.[78] This seemed to indicate that the financial benefit of the applicant was being given more weight than shaping a proposal that would not have long-lasting adverse effects on the

[77] The author found examples of residents denied this status by their council who were adamant that they were adversely affected e.g. from increased traffic or noise in the vicinity, or loss of reserve land.

[78] RMA s 105 (1) (c) which applies to coastal discharges. Schedule 4 Clause 1(b) specifies that an Assessment of Effects on the Environment should include a description of possible alternative locations or methods "where it is likely that an activity will result in any significant adverse effect on the environment". Recent case law may extend this requirement when tangata whenua concerns are involved (*Te Maru o Ngati Rangiwehiwehi v Bay of Plenty Regional Council* A095/2008).

neighbours or neighbourhood, and points to the inherent problems arising from conflicting land uses. Even when an application is turned down, there is still a cost to the affected party of protecting "quiet enjoyment" including personal stress, conflict with neighbours, and financial costs. Participants felt it was unjust that private persons should have to spend large amounts of money to maintain their residential amenity at risk from a *discretionary* activity. Very few participants sought professional advice before signing.

Some unjust practices were discovered during this study including some committed by applicants e.g. refusing to amend an application to include mitigation measures unless the affected parties paid the consultant's cost to do so. Others misled their neighbours by implying they already had a consent, and did not give them adequate time to respond. In three cases subdivision of land preceded further development of an adjacent lot. Whilst there is nothing illegal about this, new owners were not informed of these plans. It could be said that in these situations the affected parties should have been more assertive, or carried out due diligence. A differing view is that consent authorities should have sufficient oversight to anticipate such future land use conflicts.

The most serious injustice within the s 94 process occurs when an affected party gives a written approval for an application that is subsequently changed by the applicant so it is materially different, without revisiting the written approval. This effectively disenfranchises the affected party and hands a clear advantage to an applicant who in most cases will benefit financially from the application even if the initial investment is not inconsiderable. Although apparently unusual (C. L. Miller, pers. comm, 2009), five participants in this study had withdrawn written approval, four of whom discovered they had not been given the full information. Another issue that came to light is wording on the back of the written approval form for Western Bay of Plenty District Council. After outlining the main aspects of s 94, it says "Accordingly obtaining the consent of affected persons is an *important and necessary* [my emphasis] part of the resource consent procedure". Further down it states that it is up to the applicant to ensure "the demands or 'conditions' of an affected person are satisfied". If approvals are conditional "The applicant may then be required to again consult or negotiate to obtain unconditional approval" and

mentions various types of agreements. This text would seem to imply that affected parties are *expected* to come to an agreement, which is not strictly the legal position. However, none of the participants in the study raised this particular issue.

The enabling approach to resource management is adversarial and unhelpful to affected parties. Improved outcomes for them seem more likely to arise from a pro-active communicative approach where the consent authority actively explored solutions to adverse effects on the neighbours, including alternatives, rather than accepting what the applicant, who is trying to minimise costs, might propose. Without a stronger legislative mandate for the consent authority to take such action, it is hard to see how the RMA can achieve win-win outcomes.

Power Relations

There is a belief in the community that the planning process is driven largely by development interests and that local people and communities lack the resources to challenge such interests on an equal basis (Ellis, 2000:210). With few absolute standards, the planning system in New Zealand allows those with resources to 'try the system' and make application. Although some process rights exist, the cost of appeals, where provided for, is likely to run to the tens of thousands of dollars (and more) and may be beyond the means of individuals to pursue. Although New Zealand currently has an Environmental Legal Assistance Fund,[79] this is not available to private individuals, and is limited to approximately $40,000 per case. So unless rights are accompanied by resources to uphold them, they would seem an inadequate means of addressing the exercise of power.

This study found a widespread lack of knowledge, incorrect knowledge and confusion of affected parties about the RMA and planning system. Lack of knowledge is inherently disempowering. Some participants assumed that if they didn't give approval, the application couldn't be granted; another believed that talking to a local councillor was the best process to follow if council decisions were inconsistent with the rules; residents assumed that a local purpose stormwater

[79] http://www.mfe.govt.nz/withyou/funding/ela.html

reserve would be open space but this was replaced by a built reticulated system and a road. The implication of such 'beliefs' is that affected parties do not effectively utilise the processes that are open to them, although one cannot assume using the 'right' process would necessarily achieve the desired outcome. At a more basic level, some participants did not know they had the right of appeal, and would normally only be supplied with this information when served with the decision. Others found the hearing process intimidating, and the cost of professional advice and representation a major barrier to their concerns being advanced on an equitable basis. Participants strongly believed that the council should take a more active role in ensuring adequate information was provided and protecting the rights and interests of affected parties.

Affected parties felt disempowered by isolation resulting from the applicant approaching each affected party individually. Limited notification has the effect of separating those who do not concur with a proposal from community support, prevents effective joint action, at least initially, and places them at a disadvantage, especially when it comes to appeals. This was articulated by one participant who said "I feel a general public notification would have alerted people with more knowledge/experience of the RMA and the processes" [199]. Some participants expressed a sense of powerlessness, in that they felt the council decision was a *fait accompli*, and that citizens had little chance of influencing the final outcome, at least when acting on their own behalf. Some felt they only had power where they could take action "in numbers", yet the RMA is based on effects, not percentages of submissions. The relationship between the level of effects and the number of people affected is a moot point. In a non-notified situation, it is unlikely that there will be "numbers", as the effects are presumed to be minor. The only application in this study that was declined was for an activity that was going to generate significant night time noise affecting quite a lot of people. It begs the question whether it would have been declined if only one or two households were going to be affected.

As those who give written approval are not considered to be affected when decisions are being made and conditions formulated, this would suggest that in theory where there may be underlying concerns, those who withhold written

approval also hold more power to have their interests and concerns considered by decision makers. This is also a mechanism to check on subsequent changes to the application. The findings of this study suggested that those who withhold written approval have greater knowledge of the planning system, although the study also showed that knowledge of the system or withholding written approval did not always result in satisfactory outcomes.

In one case, a neighbouring property was eventually bought by the developer. Although the outcome was satisfactory for the affected party, it potentially could have been very different. The affected party had tried to sell, but the impending development deterred potential buyers. There are no provisions in the Act to protect an affected party in such a situation, where significant financial loss could have resulted, with the applicant benefiting, as there was no market for the property. Provision for compensation for affected parties when a development with major impacts is consented, is a large gap in the RMA.

Consideration of direct action occurred in three of the applications in this study, and was implemented in one instance, which seemed to have lead to a positive outcome in the meantime.

Side Agreements

This study revealed little effort on the part of applicants to "buy" written approval. The use of this market approach was of little value to the participants. For the person who had sold their property to the developer, the process was stressful and the outcome uncertain. Others, lacking awareness and experience of the system, either did not realise this option was available to them, or did not see why they should move. Overall, participants perceived themselves to be in a position of weakness. Some of the agreements that had been made had not been implemented, especially verbal ones.

Communication and Trust

The lack of trust in decision makers, and council staff to a lesser degree, was evident in this study as described by Ellis (2004) and Ellis et al (2007). Although participants thought it important to have decision-makers with local knowledge, they believed local councillors had conflicts of interest, and were overly influenced by electoral concerns. Independent expert decision-makers were favoured, but the application of technical and expert knowledge also confounded many of the participants, who felt their lay submissions were not valued. This bears out views expressed by Ellis et al (2007) and Gifford (1997). The RMA system places a great deal of weight on professional "expert" evidence and reflects the rational-comprehensive planning approach. Even where there is public notification, lay knowledge on its own cannot achieve empowerment.

Whilst commissioners were seen as being more independent, as with councillors, some were known to submitters, and presumably applicants and their consultants. The 'independence' of commissioners could also be questioned, as if their decisions are not to the council's liking, they may not engage them in the future. In addition, whilst being accountable to the council, they are not accountable to the electorate and participants questioned their commitment to the community. Ultimately, they are accountable within the legal system, and their decisions are judged under the RMA, not at the ballot box. Their use in fact emphasises the tension between the RMA as an environmental framework for decision-making on development, and the democratic will of the community.

Rights

A key question underlying this study is whether the process for reconciling competing property rights is adequate. Neighbours and others in the locality may have property rights claims as well as the applicant. It could be argued that where the property rights of existing landowners are diminished by new development, this results in the existing property owners and the community subsidising it.

Technically under the RMA, existing use rights apply to continuing an activity which may no longer be permitted under revised planning rules, rather than to the

protection of existing amenity. Participants raised questions as to the extent that existing residents have rights to protect their 'existing use' rights (in the common sense) as applying to the residential amenity they enjoy. The question for this study is whether the process for affected parties breaches such rights. Some clearly think so. The onus for upholding the rights of existing residents is on them, not the developer.

A fundamental planning right is the right to a voice about activities which may impact upon a person. Many participants considered *communities* should have more say about what happens in their neighbourhood than what is currently considered to affect only immediate neighbours, and it is not only those opposed to a development who support wider public notification. Interviews confirmed that for many people, participation was extremely important to them. The public interest and extent of environmental effects lead the majority of the participants to consider that some of the applications should have been fully notified, or affected parties more widely identified. Rights conferred on affected parties under s 94 are limited to those parties who are deemed to be adversely affected. There is no right of "self-selection", although an aggrieved party has recourse to the High Court to contest the identification of affected parties and non-notification of consent applications.

The rights of affected parties are essentially process rights, including the right to know about the proposal, and the right to withhold written approval and thereby trigger a hearing under limited notification. Except for controlled activities, an affected party has the right to appeal the decision to the Environment Court. But once an affected party has given written approval, they have no further rights of consideration, including right of appeal on conditions, even if the final consent issued by the consent authority is different to that for which approval was given. Although such an outcome may be uncommon and arising from poor process, it would seem a fundamental breach of the rights of natural justice to leave an affected party with no recourse. It would also seem to encourage "un-cooperative" responses of not giving written approval and forcing a hearing even if, on the face of it, there are no concerns, to ensure preservation of appeal rights in the case of unforeseen changes.

Permitted and controlled activity provisions in plans define property development rights. Other development opportunities are at the discretion of the consent authority. Unless an activity is classified as prohibited under the Act, an affected party has no active rights to *protection from harm*, as even if minimum standards are provided for in a district plan, application may be made to breach them. Thus the protection of affected parties from adverse effects is very much at the discretion of the consent authority, who may trade it off in the interests of the greater well-being of others in the community.

Third party rights are tied to submission rights, therefore limited notification under s 94 restricts third party appeals considerably, given that most consent applications are not publicly notified. Appeals rights were invoked by affected parties in two of the resource consents included in this study and another two by the applicant.[80] Consistent with the work of Ellis (2004a) and Willey (2006), there was no evidence that third party rights were being abused. The key factor in New Zealand in assessing the extent of third party involvement is the assessment of *environmental effects* rather than scale per se as proposed by Willey (2006:385-6). One of the applications within this study could not have been described as "small-scale", as it was a school and three others, through incremental development to existing uses, resulted in quite large scale activities. These included cool stores and pack houses, and camping grounds. Identifying the appropriate threshold at which a third party appeal right becomes legitimate is one of the ongoing challenges confronting planning, and participants in this study indicated a lack of agreement with the councils' evaluations, even from those who supported that particular application.

As discussed earlier, obligations are also seen to be associated with rights. The participants clearly recognised their obligations for action in the neighbourhood, but most did not associate this with input into the plan. There were indications that their s 94 experience, the current plan reviews, and involvement in this research may change this view. Those who had involved themselves in the plan previously were disillusioned because discretionary activity consents had allowed the

[80] 301 or 0.8% of decisions issued by territorial authorities were appealed in 2007-8.

establishment of numerous other activities in the rural-residential zone. The majority view was that council had strong obligations to plan in the interests of all ratepayers, not just applicants.

RMA

Affected parties in this study believe the community should drive the character of their neighbourhoods, developers should respect and operate within that, and communities should be able to make submissions on resource consent applications in their areas. This implies a return to greater degree of regulatory control, favoured by many of the participants in this study, even though many struggled to make this connection. The devolution of planning to the regional and district level and the public participation provisions of the RMA are seen as facilitating community-led planning in which citizens influence outcomes for their local areas through plan development. However, in this study, some participants felt the council had not followed the plan, leaving them disenfranchised.

Sustainability implies that a developer should not substantially limit options available to other (including future) individuals or groups (Memon & Gleeson, 1995:120). However certain uses can constrain other uses, as some of the affected parties in this study have found. The social costs and benefits of land use decisions are questioned by Beatley (Beatley, 1994:87), and Miller (Miller, 2004; 2006) who claims that "every development decision has re-distributional effects" (Miller, 2004:1). The fact that the RMA's purpose is sustainable management, not sustainable development, has perhaps resulted in equity issues being overlooked. In some cases, affected parties are paying a cost for neighbouring development, as effects of an activity cannot always be internalized, and the Act anticipates that some adverse effects are acceptable.

Participants demonstrated strong expectations about what type of uses should occur in certain areas, such as not mixing residential with other uses. Despite plan provisions that cool stores and pack houses are discretionary activities in the rural zone, where an area was predominantly orchards, there was an expectation that rural character would be maintained. Although this may be unrealistic, as bare land next door does not mean it will always stay that way, LIM reports do not always

reveal any substantive information if no applications have been lodged. Some of the participants in this study had obtained LIM reports. These did not give any indication of the development that subsequently occurred.

The enabling approach of the RMA creates uncertainty for the affected parties, as a wide range of activities are discretionary in most zones. A participant who had experienced several RMA applications had decided not to move as there was no guarantee that another location would not be subject to similar pressures. This study confirmed Miller's (2000) observation that "some communities viewed effects-based planning as giving flexibility to resource users at the expense of their treasured amenity values" (Miller, 2000: 28). Some participants were confounded by existing use provisions, the permitted baseline, and discretionary consents, and had little understanding of the processes for land use change. The ability to repeatedly apply for discretionary activity resource consent allows incremental change that can undermine the original intent of the plan. The lack of understanding of the planning system and how the plan can affect an individual property, the complexity of the Act, barriers to participation, and general apathy, suggest it is not surprising that the enabling approach of the Act delivers outcomes that reflect the prevailing paradigm of enabling economic development.

Section 94

A key issue is drawing the line on who is affected. The councils in this study seemed to view this narrowly. Even if full notification was not warranted because effects are localized and do not involve significant natural resources, participants considered notification to the local neighbourhood was often necessary. This may seem contradictory to the policy of limited notification, and may well be more complex to administer, but the experiences related in this study suggested that consent authorities sometimes need to consider effects on the wider area. This suggests the need for 'community notification' as an alternative to full public notification. The assessment as to whether or not the effects of a proposal are minor, is also crucial to the notification process and creates uncertainty for affected parties as their rights are dependent on the consent authority's assessment of what are minor effects. In this study some participants conceded that the council had not considered certain effects as important as the affected parties themselves had.

Rego and Davidson (2003) point to the costs, time delays and uncertainty associated with notification which can lead to intense pressure on councils not to notify (Rego & Davidson, 2003:9). They claim limited notification should reduce this pressure, where the environmental effects of an application are highly localised. MfE has acknowledged that non-notification has a risk that pressure may be placed on affected people (MfE, 1997:4). As it is the applicant who seeks written approvals, and councils appear reluctant to become involved in what is perceived as neighbourhood conflict, achieving the best environmental outcome is uncertain. MfE refers to affected parties setting out reasons for concern in a submission, enabling the consent authority to consider these reasons and deciding on appropriate mitigation (MfE, 1997:4). A significant proportion of affected parties in this study felt some pressure to give written approval, and if this pressure is acceded to, the council has no discretion to consider any effects on that person. This is where the s 94 process starts to break down. Campbell (2006) says that the right to be consulted or heard is only meaningful if others listen to and consider the views being expressed. This applies to the process for affected parties. If *conditional* approvals are not accepted, an avenue for listening to the concerns of affected parties is closed and the consent authority has no feedback as to why approval may be withheld, or what conditions would make the proposal acceptable. It would seem that by saying to affected parties, you cannot conditionally agree, it *forces* them to make an accept or reject decision, which is unreasonable, and inefficient, considering that certain conditions may make the proposal acceptable – which is part of the consent authority's role. MfE noted that

> One of the key philosophies behind the RM Act was that all parties would have the opportunity to participate in its processes. The assumption of the Act is that environmental decision making is improved when decision-makers are informed of the views and preferences of the community (MfE, 1997:2).

Requiring an affected party to take an additional step of formally writing a submission is creating a barrier and putting more onus and pressure on the affected person. Participants in this study expected more active involvement from the council to identify and address their concerns.

A major process issue arising from this study is allowing a material change to an application that has been given written approval without further recourse to the person who gave approval. Only when a consent is notified do some realise that an application has changed, but if every person gives written approval there is no notification and no redress.

Permitted Baseline

Plans are highly significant to the assessment of effects, through application of the permitted baseline, which results in some effects being disregarded, when consideration of those effects could otherwise result in conditions that reduce adverse effects on affected parties. Cumulative effects may become subsumed by the maximum development rights permitted under the plan e.g. where non-residential activities seek to establish in residential areas and it is claimed the effects are no greater than what would be permitted according to the maximum allowable density. Some of the claims as to what would be permitted under the baseline, whilst not strictly "fanciful", are unlikely e.g. when considering the number of lots allowed on an area of land, provision has to be made for access to those lots, which reduces the area available for lots. Similarly, it is unlikely that five adjoining lots would each have an educational facility with 25 persons, but this was advanced as the permitted baseline in one of the applications. The validity of baseline assessments for vehicle movements in a residential zone and assumptions about people arriving at venues in vans or buses as opposed to cars are sometimes questionable. In practice it is difficult, if not impossible, to compare activities within the baseline e.g. a campground with a capacity of 250 people operating 365 days at variable occupancy, with 60 or so residential houses, as the social situation of a campground may or may not equate to residential behaviour. A function centre could argue that people can have parties anytime they like — it is not controlled in the district plan — therefore having functions every week falls within the permitted baseline. In reality people rarely have regular parties next door, but someone could get consent to do just that.[81] Despite the baseline being discretionary, this study showed it was being literally applied.

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[81] *Troughton, Smith & Thirwell v Western Bay of Plenty District Council* (HC, Rotorua, CIV-2003-470-238, 18 February 2004, Keane J).

The most difficult aspect of the permitted baseline for affected parties is when it results in "environmental creep". A non-residential use may be established in a residential area, but over time it seeks to expand. Such expansion is often incremental, and adverse effects over and above the baseline may be considered minor. However, when expansion becomes significant, the applicant is usually well-established and consent authorities are reluctant to either limit growth of the activity on the site or to require the activity to relocate elsewhere to achieve the desired expansion.

Implementation of the RMA

Planning Practice

There was no discernible difference between practice of the two councils in the study,[82] or participant's responses to them. Despite both councils requiring completion of a written approval form, concerns about affected parties not being well informed are still evident. There is an ongoing issue with provision of information to affected parties, and there seems to be clear expectations from participants that council should take a leading role in ensuring all the information is available and correct. Both councils clearly indicate that approval is required from both owners and occupiers, and that conditional approvals are not accepted. Both have tick boxes on their forms to indicate the application, assessment of environmental effects and site plans have been provided. Both councils also advise affected parties of the implications of signing i.e. that the council cannot take into account any actual or effects of the proposal on those who have given written approval.

This study found that having affected parties' sign a standard form did not always provide them with sufficient information and safeguards. The forms do not state that the council has not yet seen the application. Several participants thought that the application they signed had been through some kind of council screening. The Tauranga City form does specifically say (in bold type) "If you are unsure about

[82] Except for notes given to affected parties by Western Bay of Plenty District Council see p110 of this chapter.

any aspect of the process or your rights as an adversely affected person – please seek advice before signing". There is no information about where a person should seek advice, although the Tauranga City from does have the council's contacts on the front of the form. The Western Bay of Plenty form is silent on the matter of advice. The current process provides no neutral intervention for affected parties at an early stage in the s 94 process — the planner is not a "critical friend". In fact it is not clear who the council considers its customers — the applicant, the affected parties, or both.

Not all of the planning reports could be found on council files, which is a concern, as it contains the council's professional analysis of the application. Two of the applications were declined by the council, one of which was successfully appealed by the applicant. In the other case, the planner had recommended granting of consent. In the remainder of the cases where the report was on the file, the council decision had reflected the planner's recommendations. Some of the interviewees clearly felt that a planner's recommendation made the decision a foregone conclusion.

Regardless of the merits of the decisions on the consents in this study, some of the experiences of the affected parties point to poor planning practice and implementation. Examples include giving misleading information to the public about plan provisions, granting consent materially different to what affected parties had agreed to, not providing answers to questions raised by affected parties, not carrying out a site visit, and poor overall transport and growth planning. Improved practice would potentially improve the experiences of affected parties, although this would not alone meet their needs — changes to the process would be necessary to achieve that. Examples of poor process during hearings reported included the selective allowance of interjections and questions.

Some of the participants' complaints about lack of implementation of the plan arise from their own lack of understanding about how plans are constructed and operated. However, some significant complaints about levels of information provided to affected parties, the levels of council communication with them, and the monitoring and enforcement of consent conditions, remain.

Mitigation - Conditions Addressing Effects on Affected Parties

One of the interviewees described mitigation as "a really dangerous word" [168], highlighting the common assumption "that you can do anything as long as you mitigated the effects but of course in many aspects you can't" [168]. This reinforces the theme of affected parties subsidizing discretionary development in their neighbourhood, as some adverse effects cannot be adequately mitigated. As discussed in Chapter 2, less than 1% of applications are declined, and this study has shown that even with conditions, those granted can adversely affect the ongoing quality of life of the neighbours. Many of the adverse effects on affected parties appeared more than minor such as traffic, rubbish, and encroachment, particularly where public accommodation and horticultural processing facilities adjoin residential uses. Some of these effects could have been significantly mitigated if appropriate conditions had been imposed and implemented. In several cases, there were alternative options for access, location or layout which would have resulted in less impact on affected parties. These options did not seem to be taken seriously by consent authorities who seemed reluctant to require applicants to implement more costly options. Mitigating conditions could sometimes be tokenistic e.g. application of the noise standards in the district plan did not always control or minimise the adverse effects. Reasonable anticipation by councils of the implication of future effects of applications did not seem evident. Outcomes of this study emphasize the desirability of overall site development plans, early consideration of landscaping and access arrangements, and in certain circumstances, the developer purchasing properties adversely affected.

Where a consent condition requires further investigation to occur before development can commence e.g. traffic and stormwater management, review conditions with both short and medium term timeframes should be included. The problem with such uncertain conditions from an affected parties' point of view is that the track record of some applicants, and councils in general, in following up on problems is very poor, and it is the affected parties who suffer the adverse effects. For this reason it is the writer's view that decision-makers should be satisfied that basic services such as stormwater management will "work" before consent is issued, and when there is a lack of clarity it could be a better process to adjourn the

hearing for further detailed investigation and consultation on conditions before a consent is confirmed. Ideally such information should be available *before* a hearing is held.

Changes to consent conditions are increasing nationally, with 4991 processed in 2007-8, 83% initiated by the consent holder (Mf E (b)). Of the ten consents in this study, three have had changes to the original conditions. One had three changes in one year, two of which arose from council errors. Affected parties are not always involved in such changes, and feel further disenfranchised by this practice.

Council Monitoring and Enforcement

This merged as a key issue. Participants were dissatisfied with council monitoring and responsiveness to complaints, with little, or very tardy action. Some affected parties gave up complaining. Even if they had been aware that technically they could apply for an enforcement order, this is a risky and potentially costly process. Affected parties were not universally sent the council decision. Unless affected parties know what resource consents allow for, it is difficult for them to seek and achieve compliance. Requiring them to request a copy if they want it, constitutes another barrier. Some of the applicants had a history of non- or poor compliance to the extent that abatement notices had been issued. Review of council files in September 2009 revealed that some of the conditions imposed in 2006 had still not been implemented. Easton has highlighted the "unresolved issue of the effective monitoring of consents" (Easton, 1998:7), seeing this as a weakness of the RMA in enforcing property rights. This would appear to be borne out in this study.

District Plans

At the time of the research there was explosive growth in the study area which was overtaking the ability of the statutory planning instruments to adequately manage. Land use conflict has arisen from the rationalisation of the horticulture industry which has concentrated large-scale post harvest operations at some sites in the absence of a planning framework that recognises the flow-on effects of such developments. Reverse sensitivity issues arose when council allowed lifestyle subdivision adjacent to these large facilities, the growth of which had not been

adequately planned for. Planning for horticultural and other business sectors is driven by industry considerations — the trickledown theory – what is good for the economy is good for the community — but in terms of those affected, this is far from true. It raises the question as to whether planners listening to the 'experts' (i.e. the industries or businesses benefiting from planning decisions) is an example of where expert knowledge can fail a community. This research highlights how poor planning can exacerbate negative effects on affected parties. Even greenfields development had not allowed for the expansion of existing activities. Better long-term planning is necessary to avoid some of the negative experiences found in this study. For some, Smartgrowth has come too late, and its effectiveness is yet to be tested. The question is also raised as to what extent the growth problems of Tauranga come back to the enabling aspect of the RMA.

Conclusion

The data reported in this study represent a 'slice' of experience of affected parties. The value of the study lies in the range of responses received (those who gave and withheld consent) and the diversity of applications. Non-notified resource consents constitute the majority of applications and provide for more cost-efficient processing of activities with minor effects. The s 94 process enables development, by providing the advantage to the applicant of avoiding costs of public notification, and greatly reduces the likelihood of appeals. However, s 94 places limits on public rights of participation, and may limit an affected party's rights. The provision of written approval for non-notified consents may restrict the range of effects that can be considered by the consent authority and result in pressure on neighbours to "say yes". There is also potential for the "buying of consents", although this study suggests it is rare.

This study explores whether, at the neighbourhood level, the process of non-notification to enable development also achieves the goal of controlling adverse environmental effects on affected parties. It highlights the tension between these two aspects of the planning system, which reflects the tensions between the rational and communicative approaches to planning. Seeking written approval from affected parties is a formal mechanism to address the concerns of those affected by development, to ensuring their interests are protected from potentially more powerful agents of change. This would reflect a communicative approach, a means

of hearing the voice of affected parties been drawn into a development not of their own making. On the other hand, the plan generally reflects a rational approach, enabling the most efficient use of resources. Under s 94 the planner's role is not the 'critical friend' of communicative planning, and 'mediating' the interests of the affected party is left to the applicant and affected parties themselves.

Ellis (2000) says a well-founded planning system delivers social, environmental and economic benefits. "The guiding spirit of ...land use planning must be to create a democratic, fair and transparent system in which all parties have confidence in both process and outcome...founded on a set of equal rights in planning" (Ellis, 2000:216). The RMA with its environmental approach to planning, public participation processes and third party rights, could be considered a model of such a planning system. However, some affected parties lack such confidence both process rights and outcomes. As Campbell (2006:104) points out, a fair procedure does not always result in a fair outcome, but for affected parties, there are also aspects of the process that put them at a disadvantage.

The study found the process succeeds when affected parties are not really affected or only in a minor way that can be addressed by some arrangement or condition. Exceptions occurred where the applicant provided misleading information, or the application was materially changed after written approval had been given. Where the applicant did not genuinely consult, poor relationships resulted and resolution of issues did not occur. Positive outcomes for affected parties occurred when an activity was welcome in the community e.g. a childcare centre. But for some, positive outcomes were only achieved when their property was purchased by the developer, or where the applicant decided not to proceed, and in one case, where an affected party took direct action outside of the formal process. Some who gave written approval also experienced adverse effects.

The study found that the process is not so satisfactory when an affected party is affected in a major way, especially when the development is immediately next door and the activity is of much greater intensity than normal residential activity e.g. horticultural processing or group accommodation. In most cases it seemed that predicted adverse effects eventuated. Negative outcomes occurred where there was

fundamental incompatibility between the nature of the application and expectations of residential character. Participants reported loss of pleasant outlook and other amenity. Another common negative outcome was loss of privacy, caused by establishment of businesses that attracted people to an otherwise low density location, resulting in nuisances such as littering, and security concerns.

This study also sought to determine what influences people in deciding whether to give their approval to a development. The affected parties in this study largely based their decision to give or withhold written approval on an instrumental basis i.e. how they were personally affected by it, and not apparently influenced by wider social, political or environmental attitudes, notwithstanding that participants expressed some of those attitudes during the course of the interviews. Effects on amenity, especially noise and traffic were the primary influences.

Most of the participants were not experienced with planning issues, and the knowledge they did have was either incorrect or at a very basic level. This resulted in many being taken unaware by the legitimate actions of applicants and being ill-equipped to participate effectively. It could be said that many of the participants showed ignorance or naivety, with only themselves to blame for not understanding the wide range of activities permitted in various zones or allowable subject to consent. However, it is the writer's view that such a judgment is overly harsh. The complexity of planning law and systems is beyond the expertise of most citizens, and the common expectation of the participants that the council had a role to protect their interests and those of the neighbourhood is not unreasonable in a representative democracy. Participants felt a stronger mandate is required to ensure that when granting consent, councils specifically consider the interests of affected parties. Affected parties need better communication and information they can understand in lay terms. They need a neutral advocate to ensure their interests are not unfairly subjugated to those of an applicant with greater financial resources, and an effective, timely council response to justifiable complaints about activities occurring without consent or exceeding district plan noise levels, including getting feedback about action taken. Suggestions made for active protection included ensuring clear and accurate information is provided about what can, and is occurring in their neighbourhoods; approaching affected parties and informing them about applications, written approvals and what they mean; ensuring staff talk to them

before a hearing; making greater efforts to impose conditions minimizing adverse effects on them; and in some instances, councils having the power to require applicants for large projects to buy neighbouring properties should that be the affected party's choice.

Justice and rights were key themes of this study. Affected parties do have rights but the ability to exercise them is limited due to the influence of power structures and resource barriers. Affected parties are not self-selected, and find themselves at a disadvantage in a reactive situation. Although the majority of respondents talked to someone else about the application, only 25% talked to a professional, the cost of which was a deterrent. If effects are likely to be significant, affected parties should seek professional advice at an early stage. Many feel the cost of this is unjust and beyond their control. Unless they have considerable financial means, affected parties have no choice but to live with the consequences of development or move, which can also result in them being out of pocket. Participants strongly expressed the view that new development should not be at the expense of existing residents: "it shouldn't be the responsibility of existing residents to adapt" [174].

Although the overall adverse effects on the environment had been assessed as *minor* for these limited notification applications, the effects on some affected parties were more than minor, and in this situation the s 94 process did not always provide for their well-being or protect their neighbourhood amenity. Affected parties need an inclusive approach for determining who is affected, and better consideration of the effects on a neighbourhood and its character. In some situations, public notification may have added sufficient voices to affect the final outcome, and countered the isolation of the "affected parties".

Injustice arises where an affected party agrees to a proposal presented to them, but the consent approved by the council differs materially from that. Affected parties need the council to better control the written approval process to ensure that they are not being taken advantage of by unscrupulous applicants, and any changes made subsequent to a hearing do not breach approvals given. Safeguards that could better protect affected parties include amending the Act so effects on those who have given written approval can still be considered, and advising all affected

parties of the final decision, which would at least allow people the opportunity to know what has happened, to "check back", and appeal if necessary.

Market failure is a key rationale for regulatory intervention. Yet where the applicant is the only likely purchaser of a property adversely affected by proposed development, affected parties are at a disadvantage. It appears that under the RMA, the property rights of applicants are given greater recognition than the property rights of affected parties, whose rights are restricted to narrowly proscribed process rights.

Changes to practice would assist in rectifying some of the concerns of the affected parties, beginning with the notification decision, which should use formal templates or reports. Councils should not underestimate potential effects on affected parties, and should make a greater effort to avoid the "harm" by declining some applications or imposing more comprehensive and targeted consent conditions. Consents should not be granted without a site visit or where there is insufficient information to formulate clear consent conditions. Submitters should have the right to raise errors of fact expressed by the applicant or council officers at hearings. Managing relationships with affected parties is important, and greater use could be made of pre hearing meetings and/or mediators where the concerns of affected parties are considered on an equal basis with those of the applicant. Consent authorities should insist on applicants providing signed copies of the proposal and any plans so that any discrepancies with the application as lodged are evident. The practice of ticking a box on a signed form does not allow this. Any material change to the original application as approved by affected parties should be re-submitted to those parties for confirmation of approval. The policy of not accepting conditional approvals should be revisited. A conditional approval allows the consent authority to better understand potential effects, about which further information may be sought or conditions applied. All affected parties, regardless of whether or not written approval has been given, should be served with a copy of the final decision, including any conditions.

As one interviewee said "it goes back to mitigation - everything should fit into the environment" [168], but opportunities to impose conditions that better managed

adverse effects on affected parties were not always taken. A recurrent theme throughout the interviews was that at a practical level, the 'avoiding, remedying or mitigating of adverse effects' was not being achieved. Some adverse effects could have been avoided or reduced by better location and layout, and through tighter conditions, particularly road widening and improvements, stormwater management and landscaping. It is evident that when an affected party does not give approval, this can result in the council imposing conditions to ameliorate effects, albeit not always to the satisfaction of the affected parties. Affected parties therefore should not give written approval if they seek any conditions. Side agreements need to be in writing if effects are significant, and civil litigation is necessary to enforce them. However, as the need for effective implementation of consent conditions was a common theme, it is unlikely that such agreements could be easily enforced.

The findings raised questions about the nature of sustainable management in terms of enabling people and communities to provide for their well being. Giving statutory recognition to affected parties under s 94 is a check and balance against non-notification, and an important part of sustainable management, providing for the control of externalities that might adversely affect the well-being of affected parties and neighbourhood amenity. However, despite the s 94 process that provides a 'voice' for local knowledge, the reality of power relations works against the interests of affected parties, resulting in the dominance of technical rationality, as claimed by Ellis (2004) and Willey (2006). Many of the participants felt the protection of their well-being was insufficient, and did not safeguard the quiet enjoyment of their homes. The participants believed that the Act was there to protect their interests, but even though affected parties, by definition, are likely to be more affected than anyone else by a development, there is no legislative requirement to protect them from *harm*. Adverse effects commonly arise from conflicting land uses, and the enabling approach of the RMA exacerbates the potential for this to occur. Participants in this study did not generally support the enabling approach. People invest their life savings in their homes, and want certainty in their residential arrangements which they do not currently enjoy. A more directive planning approach would benefit affected parties as it would give them greater certainty, and ultimately more power, to control change in their neighbourhood.

This study illustrated aspects of environmental creep and cumulative effects of ad hoc development. The extensive use of discretionary consents has resulted in rural areas changing to residential or, in some case, industrial. Also apparent is how a consent can trigger development that goes beyond what consent was originally given for. The majority of the consent applications in this study were for activities that were further development of previous activity. A city growing out can result in an industrial facility in a residential area. Repeated subdivision and commercial development with access by rights-of-way or private roads can also create ongoing problems for residents.

An over-arching question raised in this study is the extent to which the utilitarian-based planning approach of the RMA delivers fair outcomes and achieves an appropriate balance of competing interests "the good" (Campbell & Marshall, 2006), or in the case of the RMA, sustainable management. The extent of adverse effects on affected parties from a relatively small number of widely differing applications in this study is surprising, but highlights the tensions created by rapid economic growth and land use development. Affected parties believed erroneously that the RMA and the plan would protect them. Many found the Act facilitates development, and they were paying the price of someone else's development. This study suggests better long-term planning would avoid some land use conflicts. The mechanics of the s 94 process would suggest that, in practice, there is an element of de facto discrimination in favour of a utilitarian ethic that anticipates that adverse effects will occur. To counter this, a stronger mandate for consent authorities to protect affected parties from harm is needed, which would be better achieved if alternatives could be considered in the decision-making process. Provision for compensation for affected parties when a development with major impacts is consented, is a large gap in the RMA. To provide a more just process for affected parties requires changes to both practice and legislation that challenge the enabling philosophy of the RMA and the underlying dominance of land use planning by the prevailing economic growth paradigm, and is in direct conflict with the current demand for simplified and cheaper processes, incorporated into the 2009 amendment, which further erodes the rights of affected parties.

APPENDIX 1 RMA Sections 93-94D 2003

93. When public notification of consent applications is required

(1) A consent authority must notify an application for a resource consent unless—

(a) the application is for a controlled activity; or

(b) the consent authority is satisfied that the adverse effects of the activity on the environment will be minor.

(2) If subsection (1) applies, the consent authority must notify the application by—

(a) publicly notifying it in the prescribed form; and

(b) serving notice of it on every person prescribed in regulations.

94. When public notification of consent applications is not required

(1) If notification is not required under section 93(1), the consent authority must serve notice of the application on all persons who, in the opinion of the consent authority, may be adversely affected by the activity, even if some of those persons have given their written approval to the activity.

(2) However, a consent authority is not required to serve notice of the application under subsection (1) if all persons who, in the opinion of the consent authority, may be adversely affected by the activity have given their written approval to the activity.

94A. Forming opinion as to whether adverse effects are minor or more than minor

When forming an opinion, for the purpose of section 93, as to whether the adverse effects of an activity on the environment will be minor or more than minor, a consent authority—

(a) may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect; and

(b) for a restricted discretionary activity, must disregard an adverse effect of the activity on the environment that does not relate to a matter specified in the plan or proposed plan as a matter for which discretion is restricted for the activity[[; and]]

(c) must disregard any effect on a person who has given written approval to the application.

94B. Forming opinion as to who may be adversely affected

(1) Subsections (2) to (4) apply when a consent authority is forming an opinion, for the purpose of section 94(1), as to who may be adversely affected by the activity.

(2) The consent authority must have regard to every relevant statutory acknowledgement, within the meaning of an Act specified in Schedule 11, made in accordance with the provisions of that Act.

(3) A person—

(a) may be treated as not being adversely affected if, in relation to the adverse effects of the activity on the person, the plan permits an activity with that effect; or

(b) in relation to a controlled or restricted discretionary activity, must not be treated as being adversely affected if the adverse effects of the activity on the environment do not relate to a matter specified in the plan or proposed plan as a matter for which—

(i) control is reserved for the activity; or

(ii) discretion is restricted for the activity; or

(c) must not be treated as being adversely affected if it is unreasonable in the circumstances to seek the written approval of that person.

(4) However, the holder of a customary rights order must be treated as being adversely affected if, in the opinion of the consent authority, the grant of a resource consent may adversely affect a recognised customary activity carried out in accordance with section 17A(2).

94C. Public notification if applicant requests or if special circumstances exist

(1) If an applicant requests, a consent authority must notify an application for a resource consent by—

(a) publicly notifying it in the prescribed form; and

(b) serving notice of it on every person prescribed in regulations.

(2) If a consent authority considers that special circumstances exist, a consent authority may notify an application for a resource consent by—

(a) publicly notifying it in the prescribed form; and

(b) serving notice of it on every person prescribed in regulations.

94D. When public notification and service requirements may be varied

(1) Despite section 93(1)(a), a consent authority must notify an application for a resource consent for a controlled activity in accordance with section 93(2) if a rule in a plan or proposed plan expressly provides that such an application must be notified.

(2) Despite section 93(1)(b), a consent authority is not required to notify an application for a resource consent for a restricted discretionary activity if a rule in a plan or proposed plan expressly provides that such an application does not need to be notified.

(3) Despite section 94(1), a consent authority is not required to serve notice of an application for a resource consent for a controlled or restricted discretionary activity if a rule in a plan or proposed plan expressly provides that notice of such applications does not need to be served.

APPENDIX 2 RMA Sections 95-95E 2009

As amended on 1 October 2009 by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

95 Time limit for public notification or limited notification

A consent authority must, within 10 working days after the day an application for a resource consent is first lodged,—

(a) decide whether to give public or limited notification of the application; and

(b) notify the application if it decides to do so.

95A Public notification of consent application at consent authority's discretion

(1) A consent authority may, in its discretion, decide whether to publicly notify an application for a resource consent for an activity.

(2) Despite subsection (1), a consent authority must publicly notify the application if—

(a) it decides (under section 95D) that the activity will have or is likely to have adverse effects on the environment that are more than minor; or

(b) the applicant requests public notification of the application; or

(c) a rule or national environmental standard requires public notification of the application.

(3) Despite subsections (1) and (2)(a), a consent authority must not publicly notify the application if—

(a) a rule or national environmental standard precludes public notification of the application; and

(b) subsection (2)(b) does not apply.

(4) Despite subsection (3), a consent authority may publicly notify an application if it decides that special circumstances exist in relation to the application.

95B Limited notification of consent application

(1) If a consent authority does not publicly notify an application for a resource consent for an activity, it must decide (under sections 95E and 95F) if there are any affected persons or affected order holders in relation to the activity.

(2) The consent authority must give limited notification of the application to any affected person unless a rule or national environmental standard precludes limited notification of the application.

(3) The consent authority must give limited notification of the application to any affected order holder even if a rule or national environmental standard precludes public or limited notification of the application.

95C Public notification of consent application after request for further information or report

(1) Despite section 95A(1), a consent authority must publicly notify an application for a resource consent if—

(a) it has not already decided whether to give public or limited notification of the application; and

(b) subsection (2) or (3) applies.

(2) This subsection applies if the consent authority requests further information on the application under section 92(1), but the applicant—

(a) does not provide the information before the deadline concerned; or

(b) refuses to provide the information.

(3) This subsection applies if the consent authority notifies the applicant under section 92(2)(b) that it wants to commission a report, but the applicant—

(a) does not respond before the deadline concerned; or

(b) refuses to agree to the commissioning of the report.

(4) This section applies despite any rule or national environmental standard that precludes public or limited notification of the application.

95D Consent authority decides if adverse effects likely to be more than minor

A consent authority that is deciding, for the purpose of section 95A(2)(a), whether an activity will have or is likely to have adverse effects on the environment that are more than minor—

(a) must disregard any effects on persons who own or occupy—

(i) the land in, on, or over which the activity will occur; or

(ii) any land adjacent to that land; and

(b) may disregard an adverse effect of the activity if a rule or national environmental standard permits an activity with that effect; and

(c) in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion; and

(d) must disregard trade competition and the effects of trade competition; and

(e) must disregard any effect on a person who has given written approval to the relevant application.

95E Consent authority decides if person is affected person

(1) A consent authority must decide that a person is an affected person, in relation to an activity, if the activity's adverse effects on the person are minor or more than minor (but are not less than minor).

(2) The consent authority, in making its decision,—

(a) may disregard an adverse effect of the activity on the person if a rule or national environmental standard permits an activity with that effect; and

(b) in the case of a controlled or restricted discretionary activity, must disregard an adverse effect of the activity on the person that does not relate to a matter for which a rule or national environmental standard reserves control or restricts discretion; and

(c) must have regard to every relevant statutory acknowledgement made in accordance with an Act specified in Schedule 11.

(3) Despite anything else in this section, the consent authority must decide that a person is not an affected person if—

(a) the person has given written approval to the activity and has not withdrawn the approval in a written notice received by the authority before the authority has decided whether there are any affected persons; or

(b) it is unreasonable in the circumstances to seek the person's written approval.

APPENDIX 3 EFFECT OF THE 2009 AMENDMENT

Amendments were made to the notification provisions in 2009.[83] The former presumption in favour of public notification was removed although public notification is still required where a consent authority decides that adverse effects on the environment "will have or is likely to have adverse effects on the environment that are more than minor" (s 95A (2)). Although this may not seem a material change, considering the heavy emphasis in the notification case law on the public participation *policy* of the Act, this could signal that fewer judicial reviews on notification cases may succeed.

A major change of this amendment is that, in making its assessment as to whether the effects on the environment are more than minor, the consent authority *must disregard* effects on owners and occupiers of the site and *any adjacent land* (s 95D (a)(ii)). This is intended to achieve non-notification of activities where only the owner/occupier or immediate neighbour is deemed to be affected. This change may further isolate affected parties from any wider neighbourhood concerns. The requirement in s 93 to be "satisfied" effects are minor now reverts to "deciding" if effects are more than minor. The former may be a higher test.

Limited notification to any affected person (s 95B (2)) is required. A major change is that limited notification is no longer required to those who have given written approval. To date, limited notification to those who have given written approval has given those parties the opportunity to "check" that the application being considered is what they had given approval to.

It appears that direct neighbours are still be considered affected, although there is some ambiguity in the wording of the amendment, even though effects on them cannot be the basis of public notification. The amendment has changed the definition of affected parties from being those "who in the opinion of the consent authority, *may* be adversely affected" (s 94(1)), to those for whom "the effects of the activity concerned... *are more than minor*" (s 95E (1)) [my emphasis]. This subtlety constitutes a further exclusion (see *Northcote Mainstreet)*, as without

[83] See Appendix 2.

being given the opportunity to be heard as to how they *may* be affected, a consent authority can deem them not affected.

A person may withdraw their written approval prior to the consent authority deciding whether there are any affected persons (s 95E (3)(a)). Consent authorities are required to make this decision within 10 working days after an application is lodged (s 95 (a)). Previously, affected parties could withdraw their approvals prior to a hearing or a determination of the application if under delegated authority. There is now less likelihood of an affected party discovering that an applicant has provided misleading information and withdrawing their written approval (as occurred in this study) before it is too late. The amendment therefore raises the bar for affected parties.

New provisions in Section 132 provide for the *cancellation* of a consent if the application contained inaccuracies that the consent authority considers materially influenced the decision and there are significant adverse effects on the environment. The Court may also require a consent authority to review a resource consent where an offence has involved an act or omission contravening the consent.

APPENDIX 4 Council Written Approval Forms

Environmental Planning

Written Approval of Affected Person/s

Resource Management Act 1991 - s 94

Tauranga City

Tauranga City Council
[redacted]
Website
[redacted]

Part A – Applicant to Complete

Subject Site Location

Street Address : [redacted]

Suburb :

Legal Description :

Applicant Details

Applicant Name :

Address for Service

Agent Name :

Postal Address :

Contact Details :

Describe Proposal

Attach additional pages as necessary

Applicant information –

- Written approvals are required from **all** Owners and Occupiers (including tenants), associated with an affected site. If a property is owned by more than one person, all of the joint owners are considered to be 'affected persons'. If a property is rented out, the tenants are also considered to be 'affected persons'.
- Where the affected site relates to a Trust, the written approval is to be signed by a person authorised to represent the Trust.
- You need to provide affected persons with sufficient information to understand the proposal, including a copy of the application, assessment of environmental effects, and full development plans for consideration (and signing).

Part B – Affected Person to Complete

Affected Site Location

Street Address :

Suburb :

Legal Description :

Affected Person Details

Name :

Address for Service :

AFFECTED PERSON SIGNATURE REQUIRED – REFER PAGE 2

Your signature means –

☐ You fully understand why you are considered an affected party and why your written approval is sought.

☐ You understand your written approval cannot include conditions, and that any agreement with the applicant cannot be considered by the Council.

☐ You understand once you have given your written approval, the Council cannot take into account any actual or potential effect of the proposal on you.

☐ You understand that at any time before the final decision is made on the application or before the date of the Hearing (if a Hearing is held), you may give notice to the Council in writing, withdrawing your written approval under s104(4) of the Resource Management Act 1991.

IF YOU ARE UNSURE ABOUT ANY ASPECT OF THE PROCESS OR YOUR RIGHTS AS AN ADVERSELY AFFECTED PERSON - PLEASE SEEK ADVICE BEFORE SIGNING

☐ I / We OWN and OCCUPY ..... ☐ I am an / We are an OWNER only ☐ I am an / We are an OCCUPIER only

☐ I / We have been given a full & final proposal by the applicant (including the application, assessment of environmental effects and full development plans).

☐ I / We have **signed, dated and attached the application, assessment of environmental effects and full development plans**.

Pursuant to Section 94 of the Resource Management Act 1991, I / we the undersigned give written approval to the application proposal, as outlined above, including associated documents that I/we have also viewed and signed. I / we understand that in giving our approval, the Council shall not take into account any effects the proposal may have on me / us when considering the application.

Name – please print: **Date:**

_____

Signed – by affected person or person authorised to sign on behalf of affected person:

Planner Check ☐

_____

Name – please print Date:

Signed – by affected person or person authorised to sign on behalf of affected person:

Planner Check ☐

Privacy Act 1993

The information on this form is required so that an application can be processed under the Resource Management Act 1991 by the Environmental Planning Section, Tauranga City Council. The information will be stored on a public file.

Western Bay of Plenty

Written Approval of Affected Persons

Resource Management Act 1991. Section 94

Applicant Details	
Full Name(s)	
Address of Proposed Activity	
Brief Description of Proposed Activity	

Affected Persons	
Full Name(s)	
Address for Service	
Address of Property (if not as above)	
Owner(s)/Occupier(s) ☐ Owner(s) ☐ Occupier(s) ☐ (tick as applicable)	
Legal Description	

Please note:

- Council will require separate written approval(s) from the occupiers of the affected property as well as from the legal owners.
- Evidence of ownership/authority to sign may be required.
- All owners are required to sign this form or for multiple owned properties Council requires all trustees to sign unless written evidence is provided that authorises a trustee to sign on behalf of the trustees.

Please Read Carefully Before Signing

You should only sign below if you fully understand the proposal, and if you support or have no opposition to the proposal you have been asked to consider. Council will not accept conditional approvals. If you have conditions on your approval, these should be discussed and resolved with the applicant directly.

1. I / We have been given details of the full and final proposal including a copy of the application form, assessment of environmental affects and plans.
2. I/We confirm that we have completed the following:

   Copy of AEE signed and provided Yes ☐ No ☐ (Note: Resource Consents Only)

   Copy of Site Plan signed and provided Yes ☐ No ☐
3. I / We understand and accept that once I/we give my/our approval the Council cannot take account of any actual or potential effect of the activity and/or proposal upon me / us when considering the application and the fact that any such effect may occur shall not be relevant grounds upon which the Consent Authority may refuse to grant the application.
4. I / We understand that at any time before the final decision is made on the application, I / We may give notice in writing to the Council that this approval is withdrawn, under S104(7) of the Resource Management Act 1991.
5. I/We have read and fully understand the full extent of the proposal and have read and agree with what is stated in Notes 1-4 above.

Signed _____ Dated _____

216034

Guide to Consents of Affected Persons

(Section 94 Resource Management Act 1991)

Why are consents of affected persons sought?

The primary purpose of a resource consent applicant obtaining a written approval from potentially affected persons is to increase the chance that where the Environmental effects are likely to be minor Council may decide that the application can be processed on a non-notified basis. For a consent to be non-notified Environmental effects must be no more than minor and written approvals of adversely affected persons must be provided.

- Any effects on those persons giving written approval shall not be taken into account when determining if the Environmental effects are minor. This may allow an application that would otherwise have more than minor adverse effects, to fall into the minor category and potentially be non-notified.
- Where the effects are no more than minor but there are still adversely affected persons, the application would require to be notified unless those persons written consents were obtained.

Accordingly obtaining the consent of affected persons is an important and necessary part of the resource consent application procedure.

Identification of affected persons

It is important to recognise that while some people and organisations may have an interest in a proposal, they may not be affected. Some form of adverse effect on a person must be apparent for their written approval to be considered necessary. Potentially affected persons include both owners and occupiers of land.

Council may disregard only those adverse effects that will certainly be trivial (less than minor) or which are only a remote possibility.

Obtaining written approval

Council has produced this form (RCFAP) for recording the consent of affected persons. The form makes it clear that the affected persons are acknowledging:

- That the persons have been given details of the full and final proposal including a copy of the application form, assessment of environmental effects, and plans and that they have confirmed that they have signed and dated such information.
- That the persons understand and accept that once approval has been given the Council cannot take account of any actual potential effects of the activity upon those persons when considering the application and the fact that any such effect may occur shall not be relevant grounds upon which the Council may refuse to grant the application.
- That the persons understand that at any time before the final decision is made on the application they may give notice in writing to the Council that the approval is withdrawn.

Unconditional consent

Council has no responsibility to ensure that the demands or "conditions" of an affected person are satisfied; rather it is the responsibility of the applicant. Council will not accept an approval form that has been returned with conditions imposed and instead the form will be returned to the applicant for resolution.

The applicant may then be required to again consult or negotiate to obtain unconditional approval. There is additionally a range of methods available to the applicant, including letters of undertaking, or more formal methods such as deeds or agreements.

Office Use Only

Copy of Application form signed and provided	**Yes**	☐	**No**	☐		
Copy of AEE signed and provided	**Yes**	☐	**No**	☐		
Site plan signed and provided	**Yes**	☐	**No**	☐	**Not Required**	☐
Property File of Activity _____	**Property File of Affected Person(s)** _____ (Owners only)					
Accepted by Planner _____	**Yes**	☐	**No**	☐		
Signature _____						

216034

Approved for Use: 10 July 2003

APPENDIX 5 INTRODUCTORY LETTER, INFORMATION SHEET AND CONSENT FORM

Dear Sir/Madam

I am a postgraduate student at Massey University, undertaking a thesis for the degree of Master of Resource Planning. My research is about the process used by Councils when deciding whether or not to publicly notify a resource consent application.

Much of the writing about the Resource Management Act is concerned with effects on the business community or the wider public making submissions. My study aims to focus on the experience of citizens who have become involved in the RMA process because they are considered to be an "affected party", whose written approval for a development is sought under that Act.

I want to explore the experiences of such people, and what people consider when agreeing or refusing to give written approval. I am also interested to know about the effects of the development on these people when it is completed.

As you are a person considered an "affected party" by your Council in the last 5 years, I am requesting your participation in this study.

I want to emphasize that participation in this study is voluntary, and confidential to the researcher and the university research supervisor. You would not be identified in any report or publication arising from this study. Further information is on the back of this sheet.

For economy of postage I have included both a consent form and the questionnaire with this letter.

I hope you will agree to be part of this study. If so, could you please return the consent form and the questionnaire in the enclosed post paid envelope, in the next two weeks.

Thank you very much. Your time is much appreciated.

Yours sincerely,

Linda Conning

Information Sheet Affected parties: Section 94 of the RMA

Project Contacts

Researcher: Linda Conning, [redacted]

Supervisor: Dr Caroline Miller, School of People, Environment and Planning, Massey University, Palmerston North. Ph 06 356 9099 extn 7736 C.L.Miller@massey.ac.nz.

Participants are invited to contact the researcher and/or supervisor if they have any questions about the project or the interview process.

University Programme: Master of Resource Planning – Thesis

Research Goal: To understand the experiences of people who are considered affected parties under s 94(2) of the Resource Management Act, and what are the outcomes of the RMA process for those people.

To do this, it is intended to survey such people, using a questionnaire.

Participant Recruitment

People who were affected parties to a resource consent sought in the Western Bay of Plenty and Tauranga Districts in 2005 and 2006 and who have a current confirmed address and telephone number have been invited to participate. The information sought from participants is about their experiences associated with that particular consent, together with some basic demographic background and general environmental questions.

Participant involvement

Participants will be asked to complete a 6 page questionnaire, about their experiences as an affected party. This is estimated to take about half an hour of the participant's time.

Project Procedures

- Each participant will be assigned a number known only to the researcher.
- Data collected will be used to analyse the RMA process relating to affected parties.
- The data is confidential and will only be used for the purpose of this research project.
- The data and consent forms will be stored at Massey University for five years and then destroyed.
- In the completed project report, all participants will be anonymous.

Participant's Rights

You are under no obligation to accept this invitation. If you decide to participate, you have the right to:

- decline to answer any particular question;
- withdraw from the study prior to the interview;
- ask any questions about the study at any time during participation;
- provide information on the understanding that your name will not be used and you cannot be identified, unless you give permission to the researcher to do so;
- on request, be given access to a summary of the project findings when it is concluded.

Ethics

This project has been evaluated by peer review and judged to be low risk. Consequently, it has not been reviewed by one of the University's Human Ethics Committees. The researcher(s) named above are responsible for the ethical conduct of this research. If you have any concerns about the conduct of this research that you wish to raise with someone other than the researcher(s), please contact Professor Sylvia Rumball, Assistant to the Vice-Chancellor (Ethics & Equity), telephone 06 350 5249, email humanethics@massey.ac.nz. There are not considered to be any physical risks to the participants from the survey in light of the nature of the project.

Consent Form

I_____, (name) consent to participate in the research described in the Information Sheet dated 10 October 2008. I accept the assurances given and give permission to Linda Conning to use the information gained in any publication of the study.
Date:_____

APPENDIX 6 QUESTIONNAIRE

AFFECTED PARTIES QUESTIONNAIRE

PLEASE ANSWER AS ACCURATELY AND HONESTLY AS YOU CAN
ALL RESPONSES WILL BE TREATED ANONYMOUSLY

- ❖ Circle or tick your selected answer.
- ❖ If a question does not apply to your situation, write 'NA'.
- ❖ If there is not enough room for you to write explanations, please feel free to use a separate sheet of paper labelled with the question number you are answering.
- ❖ Answer all questions in relation to your involvement as an affected party.

1. Did you have any experience with the Resource Management Act before this consent?

☐ Yes
☐ No

If you answered 'Yes', then please go to Question 2.
If you answered 'No', then please go to Question 3.

2. Was it as

☐ An applicant
☐ An affected party
☐ A submitter on a resource consent or a district or regional plan
☐ Other. (Please state):_____

3. Who told you about the application?

☐ Applicant
☐ Applicant's agent e.g. planner, surveyor, lawyer
☐ A neighbour
☐ Council
☐ Someone else (Please state):_____

4. How did you first hear about the application?

☐ In writing by mail
☐ In person through a visit
☐ In person by a telephone call
☐ Other (Please state):

_____

5. Do you know the applicant personally?

☐ Yes
☐ No

If you answered 'Yes', then please go to Question 6.
If you answered 'No', then please go to Question 7.

6. How would you describe your relationship with the applicant?

_____

_____

7. What was your reaction when you found out about the application?

☐ Positive
☐ Negative
☐ Neutral
☐ Undecided

Reason:

_____

_____

8. At what stage did the applicant talk or write to you?

☐ At the design stage
☐ Once plans were complete

9. Do you think you were given enough information about the application to know how it was going to affect you?

☐ Yes
☐ No
☐ Don't know

10. Did you ask for any more information?

☐ Yes
☐ No

If you answered 'Yes', then please go to Question 11.
If you answered 'No', then please go to Question 13.

11. Was it difficult to ask for more information?

☐ Yes
☐ No

Reason:

_____

_____

12. Did you get the information you wanted?

☐ Yes
☐ No

If you answered 'No', what additional information did you want?

_____

_____

_____

13. Did you ask for any changes to the proposal?

☐ Yes
☐ No

If you answered 'Yes', then please go to Question 14.
If you answered 'No', then please go to Question 16.

14. If you asked for changes, what changes did you ask for?

_____

_____

15. Did the applicant agree to make the changes?

☐ Yes
☐ No
☐ Some but not all. (Please state):

_____
_____
_____
_____

16. Did you come to any private agreement with the applicant that wasn't part of the formal council consent process?

☐ Yes
☐ No

If you answered 'Yes', then please go to Question 17.
If you answered 'No', then please go to Question 19

17. If you answered 'Yes' to Question 16, what sort of agreement was it?

☐ Written
☐ Verbal

18. Explain what the agreement was about e.g. to do something (build a fence, plant trees), pay money, agreement not to do something?

_____
_____

19. Did you talk to anyone else about the application before deciding whether to agree to it or not?

☐ Yes
☐ No

If you answered 'Yes', then please go to Question 20.
If you answered 'No', then please go to Question 23.

20. If you answered 'Yes', who did you talk to? (You may tick more than one box)

☐ Family
☐ Lawyer or other professional paid for their services
☐ Friend or acquaintance with professional knowledge
☐ Other neighbour
☐ Council
☐ Friend

21. What advice did they give?

_____
_____
_____

22. Did you follow the advice?

☐ Yes
☐ No

Comment:_____

_____

23. Did you find it difficult to decide whether to agree to the proposal, or whether to withhold approval?

☐ Yes
☐ No

Reasons:_____

_____

_____

24. Did you ever feel you were under pressure to agree to the proposal and sign the form?

☐ Yes
☐ No

Comment:_____

_____

25. What were your reasons for either giving or not giving written approval?

_____

_____

_____

_____

26. Was the development you were consulted on subsequently publicly notified?

☐ Yes
☐ No
☐ Don't know

If you answered 'Yes', then please go to Question 27.
If you answered 'No', or 'Don't Know' then please go to Question 28.

27. What did you do when the consent was formally notified? (You may tick more than 1 box)

☐ Made a submission
☐ Attended a hearing
☐ Did nothing

Reasons:

_____

_____

_____

28. How would you describe your experience of the applicant seeking your written approval?

_____

_____

_____

_____

29. Do you consider that you had sufficient opportunity to express your concerns?

☐ Yes
☐ No

Reasons:

_____

_____

30. Were you officially advised on the Council's final decision on the application?

☐ Yes
☐ No
☐ Don't know

31. Were you satisfied with the Council's process for considering the application?

☐ Yes
☐ No
☐ Partly
☐ Don't know

Reasons:

_____

_____

32 Do you think this application should have been fully notified to the general public rather than restricted to "affected parties"?

☐ Yes
☐ No

Reasons:

_____

_____

33. Do you think the process for considering consents like this one could be improved?

☐ Yes
☐ No

If you answered 'Yes', then please go to Question 34
If you answered 'No', or 'Don't Know' then please go to Question 35

34. How do you think the process for affected parties could be improved?

_____

_____

_____

35. Has the development you were involved with been completed?

☐ Yes
☐ No
☐ Partly

36. What is your opinion of the completed development (or the development so far, if still not complete)?

_____

_____

_____

_____

_____

37. Has your experience with this consent affected your views about the Resource Management Act?

☐ Yes
☐ No

Reasons:

_____
_____
_____
_____

38. Do you agree or disagree that modifying the environment for human use seldom causes serious problems?

☐ Strongly agree
☐ Agree
☐ Neither agree nor disagree
☐ Disagree
☐ Strongly disagree
☐ Don't know

39. Do you agree or disagree that humans have the right to modify the natural environment to suit their needs?

☐ Strongly agree
☐ Agree
☐ Neither agree nor disagree
☐ Disagree
☐ Strongly disagree
☐ Don't know

40. Do you agree or disagree that the earth is like a spaceship with very limited room and resources?

☐ Strongly agree
☐ Agree
☐ Neither agree nor disagree
☐ Disagree
☐ Strongly disagree
☐ Don't know

41. Circle the number that best shows how concerned you are about the environment, where 1 means you are not concerned and 7 means the environment is of utmost concern to you.

1 2 3 4 5 6 7

42. Are you?

☐ Male
☐ Female

43. Which Age bracket are you in?

☐ Under 30 years
☐ 30-39 Years
☐ 40-49 Years
☐ 50-59 Years
☐ 60-69 Years
☐ Over 60 years

44. Is your annual income

☐ Less than $20,000 per year
☐ Between $20,000 and $40,000
☐ Between $40,000 and $60,000
☐ Between $60,000 and $100,000
☐ More than $100,000
☐ Don't wish to answer

45. Anything else you'd like to say about your experience as an affected party that hasn't been covered in this questionnaire?

THANK YOU!
PLEASE PUT THIS IN THE ENVELOPE PROVIDED AND RETURN

APPENDIX 7 QUESTIONNAIRE RESULTS

See Chapter 5 for commentary.

Qu No	Topic						
1	Experience of RMA	Yes 7	No 20				
2	RMA role	Applicant 2	Affected Party 4	Submitter 2			
3	Informed of application	Applicant 13	Applicant's agent 6	Council 4			
4	Method of Informing	Mail 12	Personal visit 13	Phone call 1			
5	Know Applicant personally	Yes 7	No 19				Neighbour 6
6	Relationship with the applicant						#See text
7	Reaction to Application	Positive 12	Negative 8	Neutral 3	Undecided 4		
8	Stage of contact	Design 13	Plans complete 12				
9	Sufficient information	Yes 13	No 11	Don't Know 1			
10	Asked for information	Yes 14	No 12				
11	Difficulty in asking for information	Yes 5	No 10				
12	Received information sought	Yes 8	No 7				
13	Asked for Changes	Yes 11	No 13				
14	Type of Changes						See text

	sought						
15	Applicant Agreed to Changes	Yes 4	No 5	Some 2			
16	Side Agreement	Yes 8	No 18				
17	Type of Agreement	Written 4	Verbal 4				
18	Nature of Side Agreement						See text
19	Discussion with Others	Yes 19	No 8				
20	Discussed with Whom	Family 8	Lawyer/paid professional 5	Friend with professional knowledge 2	Neighbour 19	Council 7	Friend 3
21	Advice given						See text
22	Advice followed	Yes 12	No 3				
23	Difficult to make Decision	Yes 1	No 25				
24	Felt Pressure to Agree	Yes 7	No 19				
25	Reasons	Amenity/ lifestyle 10	In - appropriate Use 2	Lack of trust 2	Existing business 1		See text
26	Application Notified	Yes 8	No 3	Don't Know 10			
27	Action on Notification	Made submission 8	Attended Hearing 8	Did Nothing 1			
28	Experience						See text
29	Sufficient Opportunity to Express Concerns	Yes 21	No 5				
30	Advised of Decision	Yes 16	No 9	Don't Know 1			

31	Satisfied with Process	Yes 10	No 6	Don't Know 6			
32	Public Notification Justified	Yes 18	No 7				
33	Can process be improved	Yes 11	No 11	Don't now 4			
34	Ways of Improving process						See text
35	Development Completed	Yes 12	No 7	Partly 7			
36	View of Completed development	Positive 2	Satisfactory 'OK" 5	Negative 4	Incomplete 5	Declined 6	Moved 2 No comment 3
37	Changed views of RMA	Yes 13	No 14				
38*	Modifying envt for human use seldom a problem	Strongly Agree	Agree 4	Neither agree nor disagree 9	Disagree 12	Strongly disagree 1	Don't know
39*	Humans have right to modify envt to suit needs	Strongly Agree	Agree 9	Neither agree nor disagree 7	Disagree 8	Strongly disagree 1	Don't know
40*	Earth has limited room & resources	Strongly Agree 3	Agree 16	Neither agree nor disagree 2	Disagree 2	Strongly disagree 1	Don't know 1
41	Concern for Envt 1= not concerned 7= utmost concern						
	1 0	2 1	3 0	4 2	5 9	6 10	7 4
42	Sex	Male 16	Female 11				

43	Age	30-39 4	40-49 5	50-59 5	60-69 5	>60 6	
44	Income	<$20K 0	$20-40K 8	$40-60K 4	$60-100K 5	>$100K 1	Don't wish to Answer 8
45	Additional comments						See text

*Questions 38-40 Several responses were qualified by 'sometimes" or depending on the individual case.

APPENDIX 8 INTERVIEW OUTLINE

A. Present Circumstances

1. How long have they been there and what do they like about it (values)?

How important is this place?

Has the area changed? How?

2. Should councils through district plans protect these values?

When should councils intervene in changes in the community?

B. Understanding of the RMA planning system

3. Before this application came along, were you aware that people could object to developments? Did you know that there were limits on objections?

What did you think your rights were then?

4. What do you think they are now?

What do you think your rights should be?

5. Existing uses – what rights do they have?

Was existing use a factor in the application?

6. Do you think citizens have a responsibility as to the quality of their neighbourhood?

C. S 94 Experience

7. What was your reason for giving/withholding approval?

8. What specific conditions did you ask for, if any? why?

- did Council apply what you asked for?

What did you expect to happen? What do you think of the Council response?

9. Hearing - What was that like?

Appeal – What was that like?

10. Nature of, and implementation of side agreements, if any.

11. Confidence in participating in RMA processes.
How could the council have helped you more?
Was the process "just"?

12. What has happened since?

13. Advice to others?

D. RMA

14. What do you understand by the phrase 'the public interest'?
Who should make decisions on planning applications?

15. What level of monitoring do you expect from the Council? Who do you think should pay for it?

16. What do you think about vexatious submitters?

17. Appeal rights and notification – proposed changes to the RMA.

E. Nimby

18. Familiarity with the concept of Nimby and assessment of its presence.
Would you have thought differently about a different type of development? Or if the development was located elsewhere?
What if scenarios e.g. rubbish dump, wind farm, prison.

19. What if you were developing yourself?

F. Questions about attitudes to environment generally

20. Do you think ordinary people can affect what happens in their community?
Anything else you'd like to say?

APPENDIX 9 INTERVIEW EXCERPTS

Excerpts from reports of two affected parties relating to one application:
"They had 125 immigrant labourers - noise, drinking, drug use, urinating, boisterous, loud 24/7, noise from returning shift workers, slamming car doors, yelling at each other... They started playing rugby, soccer – 50 people playing in bare feet thumps right through the house daylight till dark. We had to move out of our bedroom. They weren't meant to [drink alcohol], they couldn't control them and when I told them they were drinking they just denied it. About four times I rang and said they're smoking dope now - ah don't be ridiculous…alcohol bottles, empties were thrown into our property… we were picking up 40 a day.

I rang about four times and he [the senior monitoring officer] just brushed me off … [reason given] that I should read the article …in the newspaper. I said is that how you make your decisions … and he took that as confrontational… I emailed him as well to put it in writing. I emailed his superior and arranged to meet him, took him photos and a letter I'd written about compliances with the consent issued and he didn't want to keep any of the stuff I took him[84].... he told me I'd have to deal with [the monitoring officer]... I spoke to a few neighbours and realised they'd all had a gutsful… five of us got a meeting with the mayor and all the staff that were at the hearing …we put our views and really they were all just quite stunned…basically said there was nothing they could do….he [the mayor] looked at his staff and said …what can we do and that's when they started going through the decision….there was a lady there who actually said 'I had no idea they were going to put things like that in there'. Those were her exact words … She was the senior environment planner".

Another neighbour, who had given written approval, described it this way:
"One of our neighbours said they were so close they could hear them farting….If one of those arrived at the back of my fence I would not be happy…I know there are a number of residents more affected. There was one resident I know sold his property. He's had enough, he got so angry".

[84] Council files contained no information about these complaints.

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